No. 11638

United States

Circuit Court of Appeals

For the Minth Circuit

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND ALLIED WORKERS OF AMERICA, JEFF KIBRE, GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R. SMITH, GEORGE KNOWLTON, OTIS W. SAWYER, W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR D. HILL, C. LLOYD MUNSON, CHARLES McLAUCHLAN, ROBERT M. PHELPS, BURT D. LACKYARD, and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Six Volumes VOLUME I

Pages 1 to 462

Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division

PAUL P. D'BRIENG



United States

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LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND ALLIED WORKERS OF AMERICA, JEFF KIBRE, GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R. SMITH, GEORGE KNOWLTON, OTIS W. SAWYER, W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR D. HILL, C. LLOYD MUNSON, CHARLES McLAUCHLAN, ROBERT M. PHELPS, BURT D. LACKYARD, and RAY J. MORKOWSKI,

Appellants,

VS.

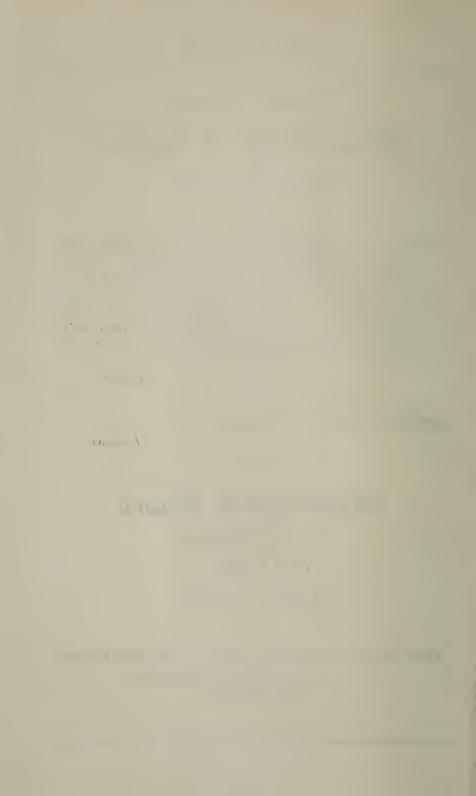
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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

KATZ, GALLAGHER & MARGOLIS, 111 West 7th St., Los Angeles 14, Calif.

KENNY AND COHN, 629 South Hill St., Los Angeles 14, Calif.

GLADSTEIN, ANDERSEN, RESNER & SAWYER,
240 Montgomery St.,

San Francisco, Calif.

For Appellee:

JAMES M. CARTER,
United States Attorney,
600 U. S. Post Office and Court House
Bldg.,
Los Angeles 12, Calif.

WILLIAM C. DIXON,

Special Assistant to the Attorney General,

ROBERT J. RUBIN,

HARRY B. SWERDLOW,

BENJAMIN F. SCHWARTZ,

Special Attorneys, Antitrust Division,
Department of Justice,
1602 U. S. Post Office and Court
House,

Los Angeles 12, Calif. [1*]

^{*} Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the Southern District of California, Central Division. February 1946 Term.

Cr. No. 18842

UNITED STATES OF AMERICA,

Plaintiff,

VS.

LOCAL 36 OF THE INTERNATIONAL FISH-ERMEN & ALLIED WORKERS OF AMER-ICA, JEFF KIBRE, GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R. SMITH, GEORGE KNOWLTON, OTIS W. SAW-YER, W. B. McCOMAS, HARRY A. Mc-KITTRICK, ARTHUR D. HILL, C. LLOYD MUNSON, CHARLES McLAUCHLAN, ROBERT M. PHELPS, BURT D. LACK-YARD, FLOYD SHERMAN, RAY J. MOR-KOWSKI,

Defendants.

INDICTMENT

United States of America, Southern District of California, Central Division—ss.

The Grand Jurors of the United States of America, duly impaneled, sworn and charged in the District Court of the United States for the Central Division of the Southern District of California, at the February 1946 Term of said Court, and in-

quiring within and for said Division and District, at the said term of said Court, do upon their oaths present as follows, to wit: [2]

Period of Time Covered by the Indictment

- 1. Each of the allegations contained in this Indictment, unless otherwise specified, shall be deemed to refer to the period of time beginning on or about May 1, 1946, the exact date being to the Grand Jurors unknown, and continuing thereafter up to and including the date of the filing of this Indictment.
- 2. Each allegation hereinafter made in this Indictment that an act has been done by any of the defendants herein, or by any other person, shall be deemed to be an allegation that, and it is hereby alleged that, such act was performed within three years next preceding the date of the presentation of this Indictment, unless otherwise expressly stated.

Definition of Terms

- 3. The term "fishing area" as used in this Indictment refers to the waters of the Pacific Ocean, both territorial and foreign, off the coast of California, in the area from Morro Bay off the Southern California coast to and including the territorial waters of the West Coast of Mexico.
- 4. The term "fishing ports" as used in this Indictment refers to Southern California ports located between Morro Bay and the Mexican border, including, but not limited to, Morro Bay, Santa Barbara, Santa Monica, Redondo Beach, San

Pedro, Newport Beach, and San Diego, to which ports fish caught in the fishing area are brought by fishermen for sale to dealers.

- 5. The term "fishermen" as used in this Indictment refers to an individual or group of individuals who own, lease or operate a particular boat for the purpose of engaging on their own account in the business of catching fresh fish and crustaceans in the fishing area, and bringing them to fishing ports for the purpose of sale to dealers.
- 6. The term "dealers" as used in this Indictment, unless otherwise indicated, refers to those companies and individuals located at [3] fishing ports who are engaged in the business of purchasing fresh fish and crustaceans from fishermen and other dealers and selling such fish to wholesalers and retailers.

The Defendants

7. Defendant Local 36 of the International Fishermen and Allied Workers of America (sometimes referred to as Local 36, IFAWA) is hereby indicted and made a defendant herein. Local 36 IFAWA is an unincorporated association affiliated with the Congress of Industrial Organizations, and has its headquarters and general offices at San Pedro, California. The membership of Local 36, IFAWA consists in part of fishermen as herein defined. Approximately 75% of all fishermen in the fishing area defined herein are members of defendant Local 36, IFAWA.

8. The following named natural persons, hereinafter referred to as the "individual defendants," are hereby indicted and made defendants herein:

		Residence or Place
Name	Position or Association with Local 36, IFAWA	of Business in California
Jeff Kibre	International Representative, IFAWA	San Francisco
Gilbert Zafran	Secretary-Treasurer	San Pedro
Clifford C. Kennison	Assistant Business Agent	San Pedro
F. R. Smith	Fisherman & Chairman of Strike Committee	San Pedro
George Knowlton	Fisherman & Member of Strike Committee	San Pedro
Otis W. Sawyer	Fisherman & Picket Captain	San Pedro
W. B. McComas	Fisherman & President of Santa Monica Unit	Santa Monica
Harry A. McKittrick	Secretary, Santa Monica Unit	Santa Monica
Arthur D. Hill	Fisherman & President, Newport Beach Unit	Newport Beach
C. Lloyd Munson	Secretary, Newport Beach Unit	Newport Beach
Charles McLauchlan	Business Agent, Newport Beach Unit	Newport Beach
Robert M. Phelps	Fisherman & Member of Negotiating Committee	Newport Beach
Burt D. Lackyard	Fisherman & Member of Negotiating Committee and Strike Picket Cap- tain.	Newport Beach
Floyd Sherman	Fisherman & President, San Diego Unit	San Diego
Ray J. Morkowski	Business Agent, San Diego Unit	San Diego

Each of said individual defendants resides or has a place of business at the respective address as indicated above, and during the period of time covered by this Indictment, has been and is a member of, associated with or employed by, Local 36, IFAWA, in the capacity as shown above, and has been and now is actively concerned with and participates in the management, direction, and control of the policies and activities of Local 36, IFAWA, and has authorized, ordered, or participated in the activities constituting the offense alleged in this Indictment, and when so indicated above are fishermen, as herein defined.

9. Whenever in this Indictment initials are used to describe and identify any defendant, the Christian or given name of such defendant is to the Grand Jurors unknown.

Nature of Trade and Commerce Involved

10. For many years prior to and including the date of the filing of this Indictment, various species of fresh fish, including but not limited to, barracuda, halibut, mackerel, sardines, rockfish, sea bass, tuna, whitefish, yellowtail and crustaceans have been caught by fishermen in the fishing brought into the fishing ports of Morro Bay, Santa Barbara, Santa Monica, Redondo Beach, San Pedro, Newport Beach, and San Diego, and sold to dealers therein. The fresh fish so purchased by said dealers are [5] unloaded at dealers' wharves located in the aforesaid ports, where they are thereafter cleaned, dressed, iced, or otherwise processed, by the dealers for sale or shipment, and by said dealers sold and shipped to wholesalers or retailers located in California and other States of the United States. Approximately 20,000,000 pounds of fresh fish and crustaceans, with a retail market value in excess of \$9,000,000, are caught annually in the fishing area and sold to dealers located at the aforesaid ports. In addition to the fish caught and sold to the dealers by the fishermen, in excess of 1,000,000 pounds of fresh fish are shipped annually by dealers and fish brokers from the States of Oregon and Washington to dealers located in the fishing ports herein described.

The fishermen who are members of Local 11. 36, IFAWA are not employees, workers, or laborers who receive a salary or wage for their work or labor, but are independent businessmen engaged in business on their own account, and who operate fishing boats for their own account and profit. No employer-employee relationship exists between these fishermen and the dealers to whom their catch is sold. The fishermen members of Local 36, IFAWA, sell their catch directly to dealers, and do not act collectively through Local 36, IFAWA, in catching, producing, preparing for marketing, processing, and handling their catch. Except for the illegal restraints desribed hereinafter, a much greater volume of fresh fish and crustaceans would have been brought to the fishing ports named herein and sold, processed and distributed from these ports in interstate commerce.

The Conspiracy

12. Beginning some time prior to May 1946, the exact date being unknown to the Grand Jurors, and

continuing thereafter up to and including the date of the return of this Indictment, the defendants named herein, together with other persons to the Grand Jury unknown, have knowingly and continuously engaged in a wrongful [6] and unlawful combination and conspiracy formed and carried out in part within the Southern District of California, Central Division, to fix, determine, establish, and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans, which combination and conspiracy has been in restraint of the aforesaid trade and commerce, in violation of Secton 1 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209, 15 U.S.C., Section 1), commonly known as the Sherman Act.

- 13. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants
- (a) agree to fix minimum prices to be charged by the fishermen for the sale of fresh fish and crustaceans caught by said fishermen in the fishing area and thereafter sold by the fishermen to dealers;
- (b) agree that with respect to all types of fresh fish and crustaceans for which a price is set by the Office of Price Administration the maximum price

set by the OPA shall be the minimum price to be paid to fishermen by the dealers;

- (c) agree that when ceiling prices set by the Office of Price Administration for fresh fish and crustaceans caught by fishermen are removed, that the maximum prices theretofore fixed by the Office of Price Administration shall be and remain the minimum prices at which a fisherman shall sell fish caught by him to dealers;
- (d) agree that when the Office of Price Administration has not fixed a ceiling price for fish and crustaceans caught by fishermen, Local 36, IFAWA shall agree with the [7] dealers on the price to be paid the individual fishermen who are members of said Local 36, IFAWA;
- (e) agree that the prices of fish sold by the fishermen members of Local 36, IFAWA shall be stabilized and non-competitive;
- (f) agree to reduce the foregoing agreement and understanding described in Paragraph 13, (a) to (e) inclusive, to written contract form, and to impose said contract upon fish dealers who refuse to sign the same by picketing and boycott methods, and to prefer fish dealers who sign said written contract, and to refuse to sell or deliver any fish caught by fishermen members of Local 36, IFAWA to fish dealers who do not enter into said contract;
- (g) agree to prevent fish dealers who do not enter into said agreement and contract from securing any supply of fresh fish or crustaceans from any other fishermen or other source by boycotting

and establishing picket lines around the places of business of such dealers;

- (h) agree to prevent fish dealers who do not enter into the aforesaid agreement and contract from shipping or otherwise transporting any fish purchased or acquired by said dealers;
- (i) agree to boycott and picket any concern or individual accepting from dealers who do not enter into said written contract, any fresh fish or crustaceans for shipment from said fishing ports to points in or outside the State of California.
- (j) agree to boycott and picket any concern or individual delivering or attempting to deliver to the usual place of business of non-signing dealers, any fresh fish or crustaceans shipped to the usual place of business of [8] such non-signing dealers by brokers or other dealers located in and outside the State of California.
- (k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-signing dealers, or in lieu thereof, had paid to Local 36, IFAWA a stupilated picket fee.
- 14. During the period of time covered by this Indictment, and for the purpose of forming and effectuating the aforesaid conspiracy and combination, the defendants, by agreement and concerted

action, have done the things which, as hereinbefore alleged, they conspired to do, and more particularly, have submitted to all dealers in and around the fishing ports herein described, the contract form Exhibit A, attached hereto and made a part hereof. Defendants, for the purpose of forcing and coercing fish dealers into signing the aforesaid form of contract, threatened to withhold and have withheld from said dealers, supplies of fresh fish and crustaceans, and by boycott and picketing methods have attempted to prevent and have prevented said dealers who refused to sign said form of contract from securing fresh fish or crustaceans from any other source.

Effects of the Conspiracy

15. The aforesaid agreement and concerted action of the defendants pursuant to and in furtherance of the conspiracy herein alleged has had the effect, as intended by the defendants, of preventing fishermen in the fishing area from carrying on their normal fishing operations and of preventing fish from being sold or brought into the fishing ports herein described for sale to fish dealers located therein who have refused to sign and enter [9] into the form of contract hereinbefore referred to; has further resulted in the fixing of arbitrary and non-competitive prices for the fish sold by the fishermen members of Local 36, IFAWA to dealers who have signed said form of contract; has prevented the public in the Western States of California, New Mexico, Arizona, Nevada, Colorado, Utah and Idaho from receiving a normal and usual supply of fresh fish and crustaceans; and has unreasonably restrained the interstate and foreign trade and commerce described in this Indictment, in violation of Section 1 of the Sherman Act.

Jurisdiction and Venue

16. The conspiracy herein alleged has been entered into and carried out in part in the Southern District of California, Central Division, where some of the defendants reside or transact business. During the period of such conspiracy, and within three vears next preceding the presentation of this Indictment, the defendants have performed, within the Southern District of California, Central Division, many of the acts set forth in Paragraph 13 hereof. More particularly, on or about May 27, 1946, the exact date being to the Grand Jury unknown, defendant Local 36, IFAWA notified the dealers that unless the form of contract attached hereto as Exhibit A was signed by the dealers by May 28, 1946, no fish of any kind would be brought into the Port of San Pedro starting 7:00 a.m., Wednesday, May 29, 1946; on and after May 29, 1946, said Local 36, IFAWA picketed and caused to be picketed the places of business of fish dealers located particularly in the Ports of San Pedro and Newport Beach, California, who refused to sign said form contract attached hereto as Exhibit A, and have prevented said fish dealers from obtaining their normal supply of fresh fish and crustaceans from any other source; and Local 36, IFAWA notified the Railway Express Agency, [10] Inc., that said Company would be picketed by the members of Local 36, IFAWA if said Railway Express Agency, Inc. accepted any fish from any San Pedro dealer for shipment to destination points in or outside the State of California where such dealer had not signed a contract with Local 36, IFAWA which contained the provisions set forth in the form of contract attached hereto as Exhibit A.

And so the Grand Jurors aforesaid, upon their oaths, do present that the defendants named herein, throughout the period herein mentioned, at the places and in the manner herein described, unlawfully and intentionally have engaged in a continuing conspiracy to restrain unreasonably the aforesaid trade and commerce, as described in this Indictment.

Dated August 23, 1946.

A True Bill:

/s/ CLYDE R. BURDICK, Foreman, Grand Jury.

/s/ WILLIAM C. DIXON,
Special Assistant to the
Attorney General.

/s/ ROBERT J. RUBIN, Special Attorney.

/s/ HARRY B. SWERDLOW, Special Attorney.

/s/ BENJAMIN F. SCHWARTZ, Special Attorney. /s/ WENDELL BERGE,
Assistant Attorney General.

/s/ HOLMES BALDRIDGE,
Special Assistant to the
Attorney General.

/s/ JAMES M. CARTER,
United States Attorney,
Southern District of
California. [11]

EXHIBIT A

Southern California Market Fishermen's Master Agreement

This Agreement made and entered into thisday of........, 1946, by and between the International Fishermen and Allied Workers of America and those locals signatory hereto, herinafter designated as the Union, and the undersigned association, fish dealer, or company signatory hereto, hereinafter designated as the company.

Witnesseth That:

Whereas, the said union is an association of fishermen engaged in the fishing industry limiting their activities to collectively catching and marketing, through said association, the products of their catch; and

Whereas, it is one of the purposes of this agreement to, so far as is practicable, regulate the fishing contemplated by this agreement, to the end that at all times there will be sufficient fish production; and

Whereas, it is also the intention of this agreement, through cooperation between said union, or association, and the fish dealers in this area, to eliminate, so far as possible, and tend to reduce any unnecessary production or over-production of fish; and

Whereas, it is the desire and intention of the parties hereto to provide an adequate outlet for the fishing catch; and

Whereas, as a means of accomplishing those objectives, the parties hereto recognize that there must be, so far as possible, regulations of the catching and marketing of fish;

Now, Therefore, in view of the mutual obligations undertaken herein, it is agreed as follows:

- 1) To effectuate the purposes of this agreement, the said dealers agree to assist said union, and the members thereof, in the marketing and distribution of their catches of fish.
- 2) That the parties hereto do agree to forthwith set up a functioning food production and distribution committee, the duties and functions of which committee being to further and implement the purposes and spirit of this agreement and to work in concert with Government agencies to the end that maximum production of fish of all kinds [12] may be produced that such production of fish will be properly and efficiently distributed; that prices will be maintained in consonance with the policies of the National Administration to combat inflation

through stabilized prices; and to acquaint the general public with the many ways that fish can be appetizingly used.

- 3) In order fully to effectuate the purpose of the Memorandum and to further stabilize the distribution and price of fish, it is agreed that this agreement shall be in force between the Union and fish dealers in the territory between Morro Bay, California, and the Mexican Border. It is further agreed by the Union that negotiations with all fish dealers in and about the matters covered by this contract will be concluded by June 1, 1946, and that thereafter all fish dealers in said territory who have signed this Memorandum will be given equal and first preference in the purchase of all fish caught by the members of the Union.
- 4-A) It is further agreed by and between the parties hereto that with respect to all types of fish and crustaceans, for which a price is set by the Office of Price Administration, that the maximum price set by the O.P.A. shall be the minimum price to be paid to the fishermen for said fish.
- B) That with respect to all fish or crustaceans, the price of which has not been the subject of O.P.A. regulations, that the parties hereto will from time to time negotiate and agree on the price thereof and that, when prices are agreed upon as contemplated herein, said prices will be reduced to a Memorandum and attached to this Agreement.
- C) With respect to all prices mentioned herein which may presently be the subject of an O.P.A.

ruling, it is agreed that if and when ceiling prices are removed through the O.P.A., the maximum prices then in effect according to O.P.A. schedules shall become and remain the minimum prices under the terms of this agreement.

- D) It is further agreed between the parties that all of the prices mentioned herein may be subject to renegotiation by either party hereto upon twentyfour (24) hours' notice in writing delivered by one to the other, which said notice shall set forth the species of fish or crustaceans te prices of which shall be subject to such renegotiation, and the prices to be procured through such renegotiation [13] and the reasons for such proposed change in price. It is further agreed that during such period of twentyfour (24) hours the buyers will accept fish from the sellers according to the usual custom in the business and the twenty-four (24) hour period shall be extended to include the catches of all boats not notified of such renegotiation notice then in the fishing grounds and until they return to port.
- 5) The Union shall have the right to furnish a fish weigher of its own choosing, and any member of the Union shall be allowed to inspect the weighing apparatus at any time.
- 6) The Company shall make payment for fish to the members of the Union regularly each week.
- 7) It is distinctly understood and agreed that the Union assumes no liability of any kind under the terms of this agreement, but is acting merely as a bargaining agency for its members.

8) Both of the parties hereto recognize that any acts on the part of either of the parties hereto which might result in a stoppage of production, or marketing of fish, affecting either the fishermen or the dealers, is not desired by either of the parties hereto; and it is, therefore, the purpose of this clause to provide a means and method by which any and all disputes arising between the parties shall be resolved through arbitrations rather than unilateral action on the part of either party hereto.

To that end, the parties hereto do agree as follows:

- A) That, in event any dispute affecting the catching and selling and price of fish arises between the parties hereto, operations under this contract will not be interrupted or curtailed. That said dispute shall, within twenty-four (24) hours, be referred to a Board of three and three set up by the fishermen and dealers with one neutral person as chairman named and agreed to by both parties.
- B) That such dispute shall be reduced to writing by both parties hereto and agreed upon in context if possible; and shall then be immediately referred to said Board, with a hearing to be held at the earliest time convenient to said Board, who shall decide said dispute and render a decision within thirty-six (36) hours after the dispute has been heard.
- C) That the decision of said Board shall be final and binding [14] upon both of the parties hereto,

and shall be retroactive in effect to the date of said dispute, unless the parties hereto affirmatively waive the retroactive effect of the decision.

- D) That the fees of such Chairman shall be borne equally by the parties hereto.
- E) That any decision relating to price may be subject to review by the Board, at the request of either party, within seven days.
- 9) This agreement shall continue in full force and effect from year to year beginning as of this date until and unless notice in writing is given to one party by the other at least thirty (30) days prior to April 1st of each year of its intention to either terminate said agreement or to alter, amend, or modify, said agreement or parts thereof. Notice of intention to alter, amend or modify shall not have the effect of terminating the agreement but shall permit each party to renegotiate the particular portion of said agreement which is to be the subject of such alteration, modification, or amendment or additions hereto. Such contemplated alterations, modifications, amendments or additions hereto shall be generally set forth in the said notice. Such written notice shall be by registered mail, with turn receipt, and such receipt shall be proof of the sending of the notice herein contemplated.
- 10) This agreement shall be binding upon and enure to the benefit of the successors or assignees of the parties hereto.

In Witness Whereof, the parties hereto through their respective officers have made and executed this agreement the day and year mentioned above.

(Company)
INTERNATIONAL FISHER- MEN & ALLIED WORKERS OF AMERICA,
By
Local 36, Secretary- Treasurer.
ByLocal 36, Morro Bay Unit.
ByLocal 36, Santa Barbara Unit. By
Local 36, Santa Monica Unit. By
Local 36, Redondo Unit. By
ByLocal 36, Newport Beach
Unit. By
Local 36, San Diego Unit.

[Endorsed]: Filed Aug. 25, 1946. [16]

[Title of District Court and Cause.]

MOTION BY DEFENDANTS TO DISMISS THE INDICTMENT

The defendants, Local 36 of the International Fishermen & Allied Workers of America, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill, C. Lloyd Munson, Charles McLauchlan, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morkowski, and each of them, move that the indictment herein be dismissed on the following grounds:

- 1. The indictment does not state facts sufficient to constitute an offense against the United States on the parts of [17] the defendants, or any of them.
- 2. The activities of the defendants, and each of them, as set forth in the indictment are exempt from the provisions of the Anti-Trust Law by reason of the statutes authorizing fishermen marketing agencies. 48 Stat. 1213, 15 USCA 521, 522.
- 3. The activities of the defendants, and each of them, are exempt from the provisions of the Anti-Trust Law by reason of the statutes providing that the labor of a human being is not a commodity or

article of commerce, and that the Anti-Trust Laws are not applicable to labor organizations. 38 Stat. 731, 15 USCA 17.

GLADSTEIN, ANDERSEN, RESNER, SAWYER & EDISES,

By GEORGE ANDERSEN,
BARTLEY CRUM,
KATZ, GALLAGHER &
MARGOLIS,

By /s/ BEN MARGOLIS,
Attorneys for Defendants.

Received copy of the within Notice of Dismissal this 23 day of Sept., 1946.

/s/ WM. C. DIXON,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 23, 1946. [19]

At a stated term, to wit: The September Term, A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 14th day of October in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for hearing on (1) defendant Lloyd Sherman's motion to strike and for a Bill of Particulars, pursuant to notice filed September 20, 1946; (2) hearing on motion of defendants dismiss the indictment, pursuant to notice thereof, filed September 23, 1946; (3) hearing on motion of defendants for a more definite statement and for a Bill of Particulars, pursuant to notice thereof filed September 23, 1946; and (4) hearing on motion of plaintiff to strike from files affidavit of Jeff Kibre, pursuant to notice filed October 3, 1946; Wm. C. Dixon, Esq., Special Asst. to the Attorney General, appearing for the Government, and Robert J. Rubin, Esq., Special Attorney, Anti-Trust-Trust Division, appearing for the Government; Arthur Garrett and John L. Harris, Esqs., appearing for the defendant Sherman; Ben Margolis, Esq., appearing for defendants Local 36, et al.;

On motion of Attorney Harris, it is ordered that Arthur Garrett, Esq., be, and he hereby is, associated as counsel for the defendant Sherman.

On motion of Attorney Margolis, and counsel for the Government not objecting, each defendant, including Local 36, waives the reading of the indictment and enters a separate plea of not guilty, plea of Local 36 being entered by Gilbert Zafran, Secretary-Treasurer, who is so authorized, and on the Court's order a resolution of said authorization will be filed. [20]

Attorney Garrett argues in support of motion of defendant Sherman to strike and for a Bill of Particulars. Attorney Dixon argues in support of plaintiff's motion to strike the affidavit of Jeff Kibre.

Attorney Margolis argues in support of motion to dismiss and in opposition to motion of plaintiff to strike the affidavit of Jeff Kibre.

It is ordered that further hearing herein be continued to October 18, 1946, at 10 a.m. [21]

At a stated term, to wit: The September Term. A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 12th day of November in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for further hearing on (1) motion of defendant Lloyd Sherman to strike and for a Bill of Particulars, pursuant to notice thereof filed September 20, 1946; (2) motion of defendants to dismiss indictment, pursuant to notice thereof filed September 23, 1946; (3) motion of defendants for a more definite statement and for a Bill of Particulars, pursuant to notice filed September 23, 1946; Robert J. Rubin, Special Attorney, Anti-Trust Division, Dept. of Justice, appearing as

counsel for the Government; Arthur Garrett, Esq., appearing as counsel for Defendant Sherman; Messrs Katz, Margolis and Gallagher by Ben Margolis, Esq., appearing as counsel for Local 36, et al., the Court denies all three motions and orders memorandum filed and entered, and that the cause be, and it hereby is, set for trial on February 18, 1947, at 10 a.m. [22]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS THE IN-DICTMENT AND OF CHALLENGE TO AND MOTION TO STRIKE OUT THE ENTIRE TRIAL JURY PANEL

To The Above Named Plaintiff and To Its Counsel of Record:

You and Each of You will please take notice that on February 18, 1947, at 10 o'clock a.m., before the Honorable Peirson M. Hall, Judge of the above entitled court, at his courtroom in the United States Post Office and Court House, in the City of Los Angeles, County of Los Angeles, State of California, when the above entitled matter comes on for trial, the defendant above named and each of them will move the Court as follows:

1. That the Indictment herein be dismissed on the grounds that the Grand Jury which returned said Indictment was improperly [23] selected and that there were material departures from the form prescribed by law in the matter of the drawing and selection of the said Grand Jury, in that the said Grand Jury was drawn in such a manner that it was not an impartial Grand Jury drawn from a cross section of the community, but that certain defined groups of the community, to-wit: laborers, people working by the day or hour, members of labor unions and Negroes were systematically and intentionally discriminated against and were excluded from the list of persons to serve as grand jurors on the said Grand Jury, although they were qualified to act as grand jurors. Defendants, and each of them, fall within the classes of persons so systematically and intentionally excluded from the list of persons selected to serve on the said Grand Jury and so discriminated against.

The exclusion and discrimination as aforesaid and the selection of the Grand Jury in the manner set forth above deprives defendants, and each of them, of their right to an impartial Grand Jury drawn from a cross section of the community, without exclusion, systematic or intentional, or otherwise, of any groups in any stratum of society, and without discrimination or class distinction and particularly without such exclusion and discrimination as against groups and classes of persons to which the defendants belong.

2. That the trial jury panel herein be quashed and stricken out in its entirely on the grounds that it was improperly selected and that there were material departures from the forms prescribed by law in respect to the drawing and selection of said

jury panel in that said jury panel was drawn in such a manner that it was not an impartial jury panel drawn from a cross section of the community, but that certain defined groups of the community, to-wit: laborers, people working by the day or hour, members of labor unions and Negroes were systematically and intentionally discriminated against and were excluded from the list of persons to serve as trial jurors on the trial jury, although they were [24] qualified to act as trial jurors. Defendants and each of them fall within the classes of persons so systematically and intentionally excluded from the list of persons selected to serve on the said trial jury and so discriminated against. The exclusion and discrimination as aforesaid and the selection of the trial jury panel in the manner set forth above deprives defendants and each of them of their right to an impartial trial jury drawn from a cross section of the community, without exclusion, systematic or intentional, or otherwise, of any groups in any stratum of society, and without discrimination or class distinction and particularly without such exclusion and discrimination as against groups and classes of persons to which the defendants belong.

Said motions will be based on all of the records, papers and files in this proceeding, the records of the jury commissioner, the affidavit of Ben Margolis filed herewith, upon evidence to be presented at the time of the of the hearing of said motions, and upon the law governing and appertaining to the selection of grand and petit jurors.

Dated: February 11, 1947.

KATZ, GALLAGHER & MARGOLIS, GLADSTEIN, ANDERSEN, RESNER, SAWYER & EDISES, and ROBERT W. KENNY,

By /s/ BEN MARGOLIS,

Attorneys for Defendants. [25]

Received copy of the within Notice of Motion to Dismiss this 11th day of Feb., 1947.

/s/ WM. C. DIXON,
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 11, 1947. [26]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 12th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge

[Title of Cause.]

This cause coming on for hearing decision on motion of the defendants to dismiss the Indictment and of challenge to, and motion to strike out the entire trial jury panel, pursuant to notice thereof filed Feb. 11, 1947; H. V. Calverley, Assistant U. S. Attorney: Wm. C. Dixon and Robert J. Rubin, Esqs., Special Assistants to the Attorney General, and Benj. F. Schwartz and Jesse R. O'Malley, Esqs., Special Attorneys, appearing in behalf of the plaintiff; Messrs. Katz, Gallagher, and Margolis, by Ben Margolis, Esq., and Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by Robert W. Kenney, Esq., appearing in behalf of all the defendants herein except Defendant Sherman, for whom Arthur Garrett, Esq., is present as attorney; and all the defendants, viz. Kibre, Zafran, Kennison, Smith, Knowlton, McComas, McKittrick, Hill, Munson, McLaughlan, Phelps, Lackyard, Sherman, and Morkowski, except Defendant Sawyer, being present; and counsel stipulating that all of the said defendants are present, the Court orders that defendants' motions to dismiss the Indictment and to strike out the entire jury panel are denied, and the Court reads its opinion into the record.

Attorney Dixon moves the Court for a postponement of the trial until Defendant Sawyer is present, the said defendant being brought here from outside of the continental limits of the United States, and that the trial proceed next Tuesday, March 18, 1947. [27]

At 11:20 a.m. court recesses. At 11:30 a.m. court reconvenes and all being present as before, Attorney Margolis states that the defendants prefer to go ahead with the trial and objects to a continuance.

The Court now orders this cause continued to 10 a.m., March 17, 1947, for trial. On motion of Attorney Dixon it is ordered that the bond of Defendant Sawyer is hereby fixed in the sum of \$10,000, and that fine of \$10 heretofore imposed upon Defendant Lackyard for contempt of Court be remitted.

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 9th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for hearing on motion of defendant Sherman for a judgment of acquittal; William C. Dixon and Robert J. Rubin, Spec. Assistants to the Attorney General, appearing as counsel for the Government; Ben Margolis, Geo. Andersen, Robert W. Kenny, Esqs., appearing as counsel for defendants except defendant Sherman; Arthur Garrett, Esq., appearing as counsel for defendant Sherman; defendants Jeff Kibre and Harry A. Mc-Kittrick being present, it is ordered that hearing proceed.

Attorney Rubin moves the Court that all the evidence adduced against all of the defendants except

defendant Sherman, be admitted into evidence as to defendant Sherman and argues in support of said motion. Attorney Rubin further moves that said motion be deemed to be the Government's response to the motion of defendant Sherman for a judgment of acquittal.

Attorney Garrett argues in support of the motion of defendant Sherman for a judgment of acquittal and in opposition to the motion of the Government that all evidence be admitted as evidence against defendant Sherman. Attorney Rubin replies. At 11:00 a.m. court recesses.

At 11:22 a.m. court reconvenes, all being present as before, and it is ordered that hearing proceed. Attorney Margolis moves the Court to strike each and all of the exhibits and all of the [29] testimony, that said motion is being made in behalf of each and every defendant, on the grounds that the exhibits and testimony constitute hearsay as to each of the defendants, and argues in support of said motion.

Attorney Margolis further moves the Court that an entry of a judgment of acquittal be entered as to each of the defendants herein on the grounds that the evidence adduced by the Government is insufficient to sustain a conviction as to each of the defendants and argues to the Court in support of said motion.

Attorney Rubin replies.

The Court denies the motion of Attorney Margolis as to defendants Munson, McComas, Lack-

yard and Markowsky, and ruling is deferred as to defendants Kibre and Hill. At 12:02 p.m. court recesses until 2:00 p.m.

At 2:10 p.m. court reconvenes, all being present as before, and it is ordered that the hearing proceed. Attorney Rubin continues to argue in response to defendants' motion to strike and for a judgment of acquittal. Attorney Margolis replies. The Court denies the motion to strike and for a judgment of acquittal as to defendants Kibre and Hill. Attorney Kenny argues in behalf of said motion of defendants. At 3:20 p.m. court recesses.

At 3:40 p.m. court reconvenes, all being present as before, and it is ordered that hearing proceed. Attorney Kenny resumes his argument. At 4:30 p.m. court adjourns until 10:00 a.m., Apr. 10, 1947.

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday, the 10th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for further trial and for hearing on motion of the defendants to dismiss the Indictment and/or non-suit pursuant to notice thereof filed Feb. 18, 1947; Wm. C. Dixon and Robert J. Rubin, Special Attorneys, appearing as counsel for the Government; Messrs. Katz, Gallagher, and Margolis, by Ben Margolis, Esq., and Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by Geo. Andersen, Esq., and Robert W. Kenny, Esq., appearing as counsel for all the defendants herein, except Defendant Sherman for whom Arthur Garrett, Esq., is present as counsel; Defendants Kibre and McKittrick being present; and counsel stipulating that the said attorneys and defendants are present;

Attorney Kenny resumes his argument in support of the said motion. At 11:05 a.m. court recesses. At 11:25 a.m. court reconvenes and all being present as before, Attorney Kenny makes a statement; and,

The Court, being now fully advised in the premises, and after due consideration, orders that the motion of Defendant Sherman to strike all exhibits and testimony is granted, and that a judgment of acquittal be entered as to the said Defendant Sherman; counsel for Defendant Sherman to prepare form of judgment.

The Court now orders that the motion of all the other defendants to strike exhibits and testimony, and for non-suit, be denied, and that proceedings on trial are hereby continued to 10:30 a.m.. April 14, 1947. [31]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 16th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for further jury trial; William C. Dixon and Robert J. Rubin, Spec. Assts. to the Attorney General, appearing as counsel for the Government; Ben Margolis, Geo. Anderson and Robert W. Kenny, Esqs., appearing as counsel for defendants; defendants Jeff Kibre, Gilbert Zafran, F. R. Smith, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick and Charles McLauchlan being present, and counsel stipulating that all are present, including the jury, it is ordered that the trial proceed.

Alexander Waissbord, (2312 Cheremoya Av., L. A.) is called, sworn and testifies for the defendants. Defendants' Exhibit M is offered and ordered marked for identification only. Hazel V. Merry (414 Stanford Av., L. A.) is called, sworn and testifies for the defendants and Defendants' Exhibit N is offered and ordered marked for identification. Brigham Grasteit (1308 E. 1st St., L. A.) is called,

sworn and testifies for the defendants. Witness Kibre resumes the witness stand and testifies further in behalf of the defendants. At 11:05 a.m. the jury is admonished and court recesses.

At 11:22 a.m. court reconvenes, all being present as before, except the jury, the Court and counsel discuss the admissibility into evidence of Defendants' Exhibits M and N and many other like exhibits to be offered. At 11:55 a.m. the jury returns into court, and on motion of Attorney Rubin, the testimony of each of Witnesses Waissbord, Merry and Grasteit is stricken and Defendants' Exhibits M and N and also ordered stricken from the record. [32]

Witness Kibre resumes the witness stand and testifies further in behalf of the defendants. At noon the jury is admonished and court recesses until 2:00 p.m.

At 2:00 p.m. court reconvenes and all appearing as before, except the jury, it is ordered that the trial proceed. Attorney Gordon Shallenberger appearing for the following fresh fish dealers, to-wit: American, Terminal Tomich, State, Catalina, L. A. Fish, Independent, J. P. Horman, Star Fisheries, Standard, Zankich Bros., Pioneer, Ocean and Bayside; moves to quash subpoena duces tecum directed to each of said dealers; that each be quashed in its entirety on the grounds of unreasonableness and an invasion of privacy under Rules 17-C, F.R.C.P. Attorney Margolis replies and opposes said motion.

The Court orders hearing on said motion continued to Friday, 10:00 a.m., April 18, 1947, and that

counsel prepare and file any supporting affidavits or other documents in support of and in opposition to same.

At 2:15 p.m. the jury returns into court, and it is ordered that the trial proceed. Witness Kibre resumes witness stand and testifies further in behalf of defendants and Defendants' Exhibit O is offered and ordered admitted in evidence. At 3:10 p.m. court recesses.

At 3:25 p.m. court reconvenes, all appearing as before, including the jury and counsel so stipulating, it is ordered that trial proceed. Witness Kibre resumes the witness stand and testifies further in behalf of the defendants. Defendants' Exhibits P, Q, R and S for identification are offered and only Defendants' Exhibits R and S are ordered admitted into evidence, Defendants' Exhibit R being the portion circled in red pencil on U. S. Exh. 201 in evidence.

At 4:25 p.m. the jury is admonished and court recesses until 10:00 a.m., April 17, 1947. [33]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday, the 18th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge

[Title of Cause.]

This cause coming on for hearing on motion of certain individuals, subpoenaed to appear herein, to quash subpoenas duces tecum; Wm. C. Dixon and Robert J. Rubin, Esqs., Special Assistants to the Attorney General, appearing as counsel for the Government; Messrs Katz, Gallagher, and Margolis, by Ben Margolis, Esq., and Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by Geo. Andersen, Esq., and Robert W. Kenny, Esq., appearing as counsel for all the defendants herein except Defendant Sherman; Defendant Kibre being present; and Gordon P. Shallenbarger, Esq., appearing as counsel for certain individuals.

Attorney Shallenbarger makes a statement that it is difficult for the witness whom he represents, viz. the fresh fish dealers, to demonstrate the materiality of the books and records of the said witness, that being the burden of the defendants in this case, and the Court concurs.

Attorney Margolis informs the Court of the materiality of such evidence, citing certain testimony from the transcript in support thereof.

Attorney Shallenbarger makes a statement in opposition to claims of the defendants. At request of the Court, Attorney Rubin makes a statement in opposition to demands of the defendants by way of subpoenas duces tecum.

The Court, being now fully informed by all counsel, orders motion to quash subpoenas duces tecum granted. [34]

It is ordered that this case is hereby continued to 2 p.m., April 21, 1947, for hearing defendants' offer of proof re admission of certain evidence. [35]

[Title of District Court and Cause.]

PROPOSED INSTRUCTIONS REFUSED

The within proposed instruction of the plaintiff and the defendants were considered and refused at a conference on May 1, 1947. The grounds and reasons for refusal are set forth in the stenographic record of that conference, as are also the objections of the parties and the grounds therefor.

/s/ PEIRSON M. HALL.
Judge.

[Endorsed]: Filed May 1, 1947. [36]

[Title of District Court and Cause.]

INSTRUCTIONS

The defendants request the Honorable District Court of the United States to give the jury the following instructions: [37]

Defendant's Proposed Instruction No. 2

I instruct you that under the laws of the State of California there are many statutes and regulations relating to and governing the catching and marketing of fish. That among these laws are the following:

1. Section 1061 of the Fish & Game Code provides as follows: "Regulation and Control

by Commission. The Commission may regulate and control fishing boats, barges, lighters or tenders, receptacles or vehicles containing fish, commercial fishermen, packers, reduction plants, plants where fish products are manufactured, and dealers in fish, mollusks, or crustaceans, or fishery products, in so far as necessary to insure the taking and delivery of fish and fishery products in a wholesome and sanitary condition to canning, packing or preserving plants, or to any plant where fishery products are manufactured, or to any fresh fish dealer, and to prevent deterioration and waste of fish."

2. Section 1064 of the Fish & Game Code reads as follows: "Deterioration or waste of fish: Use for reduction. It is unlawful to cause or permit any deterioration or waste of any fish taken in the waters of this State, or to take, receive or agree to receive more fish than can be used without deterioration, waste or spoilage. Except as allowed by this code, it is unlawful to use any fish, or part thereof, except fish offal, in a reduction plant or by a reduction process."

That under Sections 1013, 1014, 1073 and 1091 of the Fish & Game Code of the State of California it is provided that full and complete records of all fish caught and delivered to either [38] fish markets or fish dealers or canners must be kept. [39]

Defendants' Proposed Instruction No. 3

I further instruct you that a regulation of the Fish & Game Commission of the State of California provides as follows:

"In order to prevent waste of fish, no person shall take or bring in to any cannery, packing, preserving, reduction or other plant, fish in excess of an amount for which he has a bona fide order in writing, either from the plant to which the fish are to be delivered, or from an organization acting for the plants or for the fishermen within the region; and no person shall deliver fish to a packing plant which are of a size, condition or species not specified in the bona fide order.

"To prevent waste of fish, fishermen shall, to the best of their ability, avoid impounding more fish when laying out the net than they intend to load on their boat, or of impounding fish of a size or species which do not comply to this order. In cases where more fish are accidentally caught in the net than it is desired to take on their boat or lighter, or in cases where fish which in size, quality or species do not conform to this order, are accidentally caught in the net, fishermen shall release the excess fish or the fish which do not comply to this order while they are still alive and before they commence brailing out the catch."

General Order No. 12. [40]

Defendant's Proposed Instruction No. 4

I further instruct you that in this case the government must prove that the alleged conspiracy would have had a direct effect upon interstate commerce in fresh fish; for unless the alleged agreement would have an affect upon interstate commerce—that is, interfere with the movement of things or commodities over state lines—there could be no violation of the Anti-Trust Laws. And further, even if you should find that the agreement may have an effect upon interstate commerce, if you find that its effect upon interstate commerce is only indirect, or incidental or remote to such commerce, then you should find all of the Defendants "Not Guilty."

U. S. vs. Bay Area Painters, 49 Fed. §§ 733, 737; Hopkins vs. U. S.—Infra; Anderson vs. U. S.—infra. [41]

Defendants' Proposed Instruction No. 5

Purpose of Act.

The Sherman Anti-Trust Act was enacted in order to eliminate the evils of trusts and monopolies, and was enacted in the era of trusts of combinations of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods; the monopolistic tendency of which had become a matter of public concern; that its purpose was to protect consum-

ers from monopoly prices, but not necessarily to serve as a restraining code or law to regulate and police all kinds and types of interruption and obstruction to the flow of trade. Congress feared the concentrated power of business organizations to dominate markets and prices, and intended to outlaw business monopolies.

The Act does not provide that an agreement by a laborer or producer or combination of laborers or producers for the sale of the labor of a human being, or the things wrought or produced by his labor would be prohibited by the Act, even though the things or articles made or produced by him were to be later shipped in interstate commerce.

Anderson vs. Shipowners, 71 L. Ed. 298, 302; Borman-Sherman Act, Page 3; Allen Bradley vs. Local Union, 89 L. Ed. 1946. [42]

Defendants' Proposed Instruction No. 6

As to Rule of Reason.

I instruct you that the Anti-Trust Act does not forbid or restrain the power to make normal or usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose. In other words, the term "restraint of trade" should be given a meaning which would not destroy the right to contract, and render difficult, if not impossible, any

movement of trade in the channels of interstate commerce. Therefore, if you find from the facts of this case, that the agreement or contract, or combination, or conspiracy which the Government contends was entered into between the Defendants, was an agreement which reasonably may be considered as a normal or usual agreement for the marketing of their products, then you should find the defendants Not Guilty.

U. S. vs. American Tobacco Co.,55 L. Ed. 663, 694;Standard Oil vs. U. S.,55 L. Ed. 619. [43]

Defendants' Proposed Instruction No. 7

I instruct you that in this case the Defendants are not accused of attempting to create a monopoly in the fish industry or in the fish industry in this, or in any other area—they are solely accused of entering into an agreement among themselves to set the prices at which fish caught by them shall be sold. You are therefore to disregard any claim of the Government, through its attorneys, or any evidence in the case relating to the defendants creating or attempting to create a monopoly; for in this case the defendants are not accused of creating, or attempting to create, any monopoly. (Indictment)

Defendants' Proposed Instruction No. 8

I further instruct that if you find the agreement, combination or so-called conspiracy with which the defendants are charged, to be reasonable, in view of all of its considerations, then and in that event, I instruct you to find all of the defendants Not Guilty.

In determining whether the agreement is reasonable you are to be governed, at least in part, by the following factors:

- 1. The Fish & Game laws of the State of California, which prohibit waste of fish.
- 2. The same laws, which require all fish caught to be marketed or used.
- 3. The same laws, which require fishermen to have bona fide orders for the sale of fish before they are caught.
- 4. The fact that under such laws, in order to procure orders for sale or delivery of fish to be caught, whether it is reasonable for the fishermen to insist upon a price in advance of embarking on the fishing voyage.
- 5. Whether it is a fair, sensible and reasonable practice for the Defendants to insist in advance for prices to be set for their catch of fish.
- 6. Whether it is reasonable for fishermen, whose labor is rewarded by the price at which their catch is sold, to know and determine in advance the basis, or rate, at which they will be compensated.

- 7. Whether they intended to restrain any sale of fish caught by them, or either of them.
- 8. The fact that they are not accused of endeavoring to set the resale or consumer price of fish by concert of action with the wholesale buyers or dealers in fish.
- 9. That one of the purposes and objects of the fishermen is to prevent the decline in fish prices to a point where commercial fishing would not pay them a fair return for their labor.
- 10. That by setting prices in advance, and at a price considered [45] by them to be fair and reasonable as a return on their labor, the defendants endeavor to stabilize the entire industry.
- 11. Whether the defendants sought to limit production of fish, or sought to increase the production and procure greater markets for and consumption of fish.

Appalachian Coal vs. U. S., 77 L. Ed. 825; Standard Oil vs. U. S., 221 U. S. 1; U. S. vs. American Tobacco, 221 U. S. 106.

Defendants' Proposed Instruction No. 9

I further instruct you that the only matter or facts you may consider in this case must be limited to the so-called agreement between the defendants which the government contends is in restraint of trade—that is, whether under the facts covered by the agreement, the agreement is in unreasonable restraint of trade. You are therefore to disregard

any and all evidence in the case relating to such things as strikes, boycotts, picketing, etc. except in so far as those acts may tend to establish the fact of the defendants entering into or seeking to enter into an agreement to procure certain prices for the fish caught by the labor of the defendants. In other words the law is not concerned with any means used by the Defendants, but is only concerned with whether the agreement itself is in unreasonable restraint of trade.

Apex Hosiery vs. Leader, 84 L. Ed. 469.

Defendants' Proposed Instruction No. 10

I instruct you that if, under the facts of this case, you determine that the Defendants are workers, or that they occupy a position in our economic system consistent with, or equivalent to, workers, then I instruct you that the terms of the Sherman Anti-Trust Law are not applicable to them and you must find each of the Defendants "Not Guilty."

Clayton Act, 15 U. S. C. A. Sec. 17; Hunt vs. Crombock, 89 L. Ed. 1954; Allen Bradley vs. Local Union, 89 L. Ed. 1939. [48]

Defendants' Proposed Instruction No. 11

I instruct you that under our law the labor of a human being is not a commodity or article of commerce; that therefore in relation to the product of their labor workers may, among themselves, make any agreement they wish regarding the sale of the products of their labor, which includes the price at which such products may be sold.

Clayton Act, 15 U. S. C. A. Sec. 17; Hunt vs. Crombock, 89 L. Ed. 1954, 1956; Allen-Bradley vs. Local Union, 89 L. Ed. 1939. [49]

Defendants' Proposed Instruction No. 12
As to Co-operatives:

I instruct you that under a law of the United States, persons engaged in the fish industry, as fishermen, catching fish, may act together in collectively catching and marketing the fish caught, and may make and enter into all contracts necessary or desirable to accomplish such purposes.

I therefore instruct you that if you find that the Defendants, as members of the Defendant Union or Association acted or combined together for the purpose of catching fish, and acted or combined together for the purpose of procuring markets and market prices for fish caught by them, that such conduct, or acts or combination on the part of the Defendants, are permissable acts and not a violation of law, and you should therefore find the Defendants "Not Guilty."

15 U. S. C. A. 521;
U. S. vs. Dairy Co-Op., 49 Fed. S. 475;
Columbia River Packers vs. Hinton,
34 Fed. S. 970, 977;
Liberty Warehouse Co. vs. Burley Co-Op.,
72 L. Ed. 473. [50]

Defendants' Proposed Instruction No. 13

I instruct you that if you find, under the facts of this case, that the defendants are the original producers of fish; and that none of their acts or agreements either contemplate or tend to restrict or interfere with competition of middlemen in or in the consumer market, you shall find the Defendants "Not Guilty." [51]

Defendants' Proposed Instruction No. 14

I instruct you that the Sherman Anti-Trust law does not apply to agreements for the sale of fish entered into between the original working producers of such fish. That the Sherman Anti-Trust Act does not apply to agreements between working fishermen, which agreements may have for their object the setting of prices for their catch. That the purpose of the Anti-Trust Act is to prevent agreements relating to the sale of commodities in interstate commerce after such commodities have entered the market. Therefore, if you find that the defendants, as original working producers of fish, entered into agreements regarding the selling of fish, but that such agreements had no effect upon the resale of such fish after the fish entered

the market or channels of trade, then I instruct you that you should find all of the Defendants "Not Guilty."

Sherman Act;

Clayton Act;

Philadelphis Rec. Co. vs. Mfg. Asso., 63 Fed. S. 254, 261;

Anderson vs. Shipowners Asso., 71 L. Ed. 298, 302;

Hunt vs. Crombock, 89 L. Ed. 1954. [52]

Defendants' Proposed Instruction No. 15

I further instruct you that working fishermen may agree among themselves for the sale of their catch, they therefore have the right to enter into contracts for the disposition or sale of their products when such products enter the first channels of trade.

U. S. vs. Bay Area Painters Asso.,49 Fed. S. 733. [53]

Defendants, Proposed Instruction No. 16

I further instruct you that there is no evidence in this case, nor does the government contend, that the Defendant Union or its members sought to control the price of fish in the trading market. And further, that the Sherman Act does not prevent laborers, workers, fishermen or farmers from combining together for the purpose of procuring a price satisfactory to them for the fruits of their labor.

U. S. vs. Dairy Co-Operative Assn., 49 Fed. S. 475;

Hunt vs. Crumboch, 89 L. Ed. 1954; Allen Bradley case, infra. [54]

Defendants' Proposed Instruction No. 17

If you find from the facts in this case that the purpose and objectives of the Defendant Union and its members was to assure them a reasonable return or price for the fish products caught by their labor, then I instruct you that their activities in demanding a written contract detailing prices to be paid for the fish caught by their labor is not a combination or agreement in restraint of trade and you must therefore find the Defendants "Not Guilty."

Allen-Bradley vs. Local Union, 325 U. S. 797; U. S. vs. Hutchinson, 312 U. S. 219; Hunt vs. Crombock, 325 U. S. 821. [55]

Defendants' Proposed Instruction No. 18

It is one of the contentions of the Defendants in this case that in essence they are workers, or laborers, selling their services and the use of their vessels and equipment, as fishermen, at wages to be determined at so many cents per pound for fish delivered. If you should find as a fact that they are such type of workers, being compensated as mentioned, then I instruct you that no law of the United States prevents them from agreeing among themselves to set a price on the fish, and you must therefore find them "Not Guilty."

Hopkins vs. U. S., 171 U. S. 578; Anderson vs. U. S., 171 U. S. 604. [56]

Defendants' Proposed Instruction No. 19

I further instruct you that in so far as the facts of this case are concerned it is not a violation of law for fishermen, original working producers of fish, to agree with each other to dispose of their catch at an agreed price, so long as the agreement, does not affect the right of any fisherman, who is a party to the agreement, to engage in the fishing industry and dispose of his catch as advantageously as the others may do.

Therefore, if you find from the facts of this case, and it is not disputed, that it was not the intention of the defendants to limit in any way the fishing activities of any fisherman in the agreement, then you must find all of the Defendants "Not Guilty."

Standard Oil vs. U. S., 55 L. Ed. 619, 641-43.

[Endorsed]: Filed Feb. 18, 1947. [57]

[Title of District Court and Cause.]

SUPPLEMENTAL INSTRUCTIONS

The defendants request the Honorable District Court of the United States to give the jury the following instructions: [58]

Instruction No. S-1

You are instructed that ceiling prices for fish fixed by the Office of Price Administration are fair and equitable prices. They were fixed by the Administrator of that agency under the requirement of the law that he take into due consideration general production costs, general profit levels, and the public interest. Therefore, if you find that the defendants did not agree among themselves to obtain a price for the fish caught by them at a price higher than the ceiling price fixed by the O.P.A., then the prices set by them, as a matter of law, cannot be excessive or the subject of a criminal prosecution, and you must return a verdict of not guilty.

60 Harvard L. Rev. 133;64 Fed. Supp. 140;50 USCA 901, 902. [59]

Instruction No. S-2

You are instructed that the right to picket is a right flowing out of the Constitution of the United States and may be exercised by any citizen or group of citizens. It is, of course, true that trade unions exercise this right to a greater extent than other groups or organizations, but the right to picket may be exercised by any group or organization of our people.

I therefore further instruct you that the defendants in this case were completely within their rights in picketing the premises of the mentioned dealer organizations.

New Negro Alliance vs. Sanitary Groc. Co., 82 L. Ed. 1012. [60]

Instruction No. S-3

You are instructed that some of the evidence in this case may tend to indicate a dispute between the American Federation of Labor and the Congress of Industrial Organizations. Such a dispute, or any difficulties between these two organizations, have no relevancy to this case and must be disregarded by you in endeavoring to reach a verdict. [61]

Withdrawn.

Instruction No. S-4

You are instructed that the defendants here as a matter of law, are to be considered in the same category as agriculturists and horticulturists, and that agricultural and horticultural organizations instituted for purposes of mutual help and not having capital stock or conducted for profit are exempted from the operation of the anti-trust laws. Therefore, if you find that the defendants combined in an organization to sell the fish caught by them and did not include in their organization any

persons other than fishermen operating in the same manner that they did, you must return a verdict of not guilty.

> (15 USCA Sec. 17; Sen. Rep. No. 698, 63rd Congress, 2d Session, 1914, p. 46.) [62]

Instruction No. S-5

I instruct you that a working producer is a person the basis of whose livelihood is his own labor or a person whose livelihood has his own labor as one of its chief factors. You are instructed that a working producer who joins solely with other similar working producers to fix the price of articles produced by them is not guilty of any violation of the anti-trust laws, and therefore, if you find the defendants are working producers who combined solely with other similar working producers for such purpose, you must return a verdict of not guilty.

(15 USCA Sec. 17; Sen. Rep. No. 698, 63rd Congress, 2nd Session, 1914, p. 46.) [63]

Instruction No. S-6

Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Such organizations are those where labor is the basis or one of the chief factors in the organizations, as in the case of labor organizations proper, and in agricultural and horticultural organizations. The reason for the exemption of these organizations from the operation of the anti-trust laws is because the labor of a human being is not a commodity or article of commerce.

Therefore, if you find that the defendants acted as members of an organization in which labor was the basis or one of the chief factors, they did not act in restraint of trade, and you must return a verdict of not guilty.

> (15 USCA Sec. 17; Sen. Rep. No. 698, 63rd Congress, 2nd Session, 1914, p. 46.) [64]

Instruction No. S-7

You have been advised that all of the defendants claim, (among other defenses) to have been operating under the terms and protection of the Fishery Marketing Act, a law of the United States.

If you find that their activities come within the meaning of that Act, then you must find the defendants Not Guilty.

In determining whether the activities of the defendants come within the meaning of such Act,

you are instructed that it is the policy of the law, in criminal cases, that wherever, from a given set of facts, it is reasonably possible for a jury to conclude that such acts are within the law, it is the duty of the jury to so find. In other words after considering the nature of the agreement entered into by the defendants, and bearing in mind the terms of the Fishery Marketing Act as heretofore explained to you, if it is reasonably possible for you to conclude that the Acts of the defendants have the protection of such Act, it is your duty to so find and acquit the defendants.

In considering this question, you should ignore the evidence relating to picketing, boycotting, interstate commerce and strikes.

United Brotherhood vs. Lumber Products Asso.

Oct. Term—U. S. Supreme Court. [67]

Instruction No. S-8

An employee-employer relationship does not depend on the existence of a payroll providing for regular compensation of workers at regularly-stated intervals. Such a relationship can also exist if the worker is paid for his services on a piecework basis under which he is only paid as he delivers the article or piece which he has produced as the result of his labor and use of his own tools. Labor disputes may arise between such a piece worker and his employer.

A labor dispute may also arise between persons who, for other purposes, are technically indepen-

dent contractors or businessmen and other persons, or groups of persons, who furnish the former the principal source of their livelihood.

Such a circumstance legally exists where the so-called independent contractor or businessman gains his livelihood as the result of his own labor and the use of his own tools and where, as an individual, he lacks equal bargaining power in his dealings with those from whom his livelihood is gained.

Both piece workers and independent contractors or businessmen who find themselves in this economic position may lawfully join together in a labor union and, by collective bargaining, seek to increase their compensation and better their working conditions.

If you find that the defendants are piece workers or independent contractors or businessmen, occupying the economic position I have just described to you, and if you further find that their activities as described in the indictment were confined to a combination among themselves [65] designed to improve their own situation, then they have not violated the Sherman Act in any way and you must acquit.

Milk Wagon Drivers' Union v. Lake Valley Farm Products, 311 U. S. 91.

N. L. B. R. vs. Hearst, 322 U. S. 111 at 127.

New Negro Alliance vs. Sanitary Grocery Co., 303 U.S. 552, U.S. vs. Hutcheson, 312 U.S. 219. [66]

Instruction No. S-9

I further instruct you that evidence of coercive methods and tactics such as boycotting and picketing was only admitted for the limited purpose of showing the participation of the various individual defendants in seeking to obtain a price-fixing contract. It is the contract alone that determines the legality or illegality of the acts of the defendants under the conspiracy alleged in the indictment. If you find that the contract proposed by the fishermen to the fish dealers (Government's Exhibit No. 3) is one which they were legally permitted to enter into, then you must disregard the evidence of boycotting and picketing for any purpose and find the defendants not guilty.

Apex Hosiery vs. Leader, 310 U. S. 469.Hunt v. Crumboch, 325 U.S. 821.Allen Bradley vs. Local Union No. 3, 325 U. S. 797. [68]

Instruction No. S-10

I further instruct you that one of the defenses of the defendants is that the organization to which they belong and through which they function, Local 36, is a trade or labor union, and therefore, the acts of the defendants are not subject to the penalties of the Sherman Act. If they are acting solely in self interest and not in collusion with other economic groups you should acquit the defendants. In determining whether said Local 36, one of the defendants, is a trade or labor union, you are instructed that it is the policy of the law, in criminal cases (and this is a criminal case) that wherever, from a given set of facts, it is reasonably possible for a jury to make a finding or determination of fact in favor of the defendant, it is the duty of the jury to so find. In other words, after considering the nature of the activities, and history of Local 36, if it is reasonably possible for you to conclude that it is a trade or labor union, and is acting solely in self interest and not in collusion with other economic groups it is your sworn duty to acquit the defendants. [69]

[Title of District Court and Cause.]

Defendants' Proposed Instructions (Second Supplement)

The defendants request this Honorable District Court of the United States to give the jury the following instructions: [70]

Instruction No. S-12

I further instruct you that in order for the defendants to have the protection of the Fish Marketing Act, it is not necessary that they all act together in the catching of the fish; it is sufficient under the law for the defendants to have the benefit of the Fish Marketing Act if they are members of an association which acts as a bargaining agent

or sales representative for the fishermen and through which agent prices are negotiated and established.

Stark County Milk Products Assn. vs. Tabeling, 192 Ohio St. 159; 98 A. L. R. 1393.

Johnson vs. Georgia-Carolina Retail Milk Producers Assn., 182 Ga. 695; 186 S E. 824.

Hulbert—Legal Phases of Cooperative Associations, P. 119. [71]

Instruction No. S-13

I further instruct that in the Fish Marketing Act, to which reference has been made, the word "cooperative" is not used; nor is it contemplated, nor is it required by the terms of the Fish Marketing Act for a group of persons such as fishermen to receive the benefit of the Act that they be a cooperative as that term is legally and generally understood; that it is sufficient for the fishermen to act together in the marketing or selling of their catches of fish.

15 U. S. C. A. 521. [72]

Instruction No. S-14

I further instruct you that under the laws of the State of California (and such laws are applicable in this Federal Court), fishermen catching fish acquire no title or ownership in the fish they catch. They merely acquire the right to use or dispose of

the fish according to the laws of the State of California. These laws permit fishermen to take or catch fish and dispose of them as provided by law.

I therefore instruct you that the only right the fishermen acquire in the fisheries of this state is the right to use their labor and tools in the catching and taking of fish and to dispose of the fruits of their labor in accordance with the laws referred to.

I therefore further instruct you that the last mentioned matters should be considered with relation to one of the defenses of the defendants in this case which is that the principal or chief factor in their operations is labor expended in the taking or catching of fish and that in essence what they sell is their labor.

I therefore further instruct you that Section 6 of the Clayton Act, which has been referred to in this case, reads in part, as follows:

"The labor of a human being is not a commodity or article of commerce . . . nor shall (labor) organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws."

I therefore further instruct you that if you find the activities and operations of the defendants consist of their labor as set forth in the quoted portion of the Clayton Act, then I instruct you that the actions of the defendants in entering into [73] any alleged agreement regarding the sale of their fish under the facts of this case are not in violation of law.

People vs. Stafford Packing Co., 193 Cal. 719, 725.

People vs. Huvdon Co., 215 Cal. 54.

People vs. Monterey Fish Products Co., 195 Cal. 557.

Santa Cruz Oil Co. v. Milnor, 55 Cal. App. (2d) 56 15 U. S. C. A. 17. [74]

Instruction No. S-16

In considering the question as to whether the activities of defendants have been unreasonably in restraint of trade, I instruct you that the purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest; to afford protection from monopolistic tendencies and combinations. The restrictions imposed by the Sherman Anti-Trust Act are not mechanical or artificial. Its general phrases and language, interpreted to attain its fundamental objects, set up the essential standard of reasonableness. These phrases call for vigilance in the detection and frustration of all efforts unduly or unreasonably to restrain the free course of interstate commerce; But they do not seek to establish a more delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition upon a sound basis. The law has established that only such contracts and combinations are within the prohibition of the Act as by reason of intent or the inherent nature of the contemplated acts prejudice the public interest by undue restriction, combination or unduly obstructing the course of trade. The question of application of the statute to any business practice is one of intent and effect and is not to be determined by arbitrary assumption. It is, therefore, necessary in this case to consider the economic conditions peculiar to fish catching and marketing; the practices which have existed; the nature of the defendants' methods, problems and difficulties in selling their catches; and the reasons which led the defendants to adopting the method of selling their catch and the probable consequences of carrying out that plan in relation to market prices and other [75] matters affecting the public interest insofar as the catching, sales and consumption of fish affect that public interest.

Appalachian Coals v. U.S., 288 U.S. 344.

Defendants' Proposed Instruction No. S-17

I further instruct you that in enacting the Sherman Anti-Trust Act the evil sought to be eliminated was the bad effect upon interstate commerce which had been caused by monopolists agreeing among themselves to increase prices to consumers, and Congress felt that in artificially increasing such consumer prices such artificial prices would lessen the

flow of interstate commerce. But it is the effect upon consumer prices which the Sherman Act sought to eliminate and therefore an agreement relating to prices must be an agreement which would tend to, or have an effect upon, consumer prices in order to be a crime under the Sherman Anti-Trust Act.

Therefore, if you find from the evidence in this case that there was an agreement among the defendants to set the prices of the fish they sold to the fish dealers or fish markets, but that said agreement would not tend to, or have an effect upon, consumer prices, then I instruct you that such an agreement is not a crime or violative of the Sherman Anti-Trust Act.

Standard Oil Co. vs. U. S.—Supra. Socony Vacuum Oil Co. vs. U.S.—Supra

Defendants' Proposed Instruction No. S-18

I further instruct you that with reference to Exhibit No. 3, proposed stabilization agreement introduced by the government, is, by its terms, an open shop contract. In other words, in labor relations there is both a closed shop and an open shop. A closed shop places a limitation upon the right of the employer to hire workers or to produce supplies or equipment; the open shop places no such restriction upon an employer and the employer may hire or deal with whom he pleases.

Under the terms of Exhibit No. 3, it is an open

shop contract placing no restrictions upon the rights of the dealers to hire whom they please or deal with whom they please. [78]

At a stated term, to wit: The February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 7th day of May, in the year of our Lord, one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for further jury trial of defendants Local 36 IFAWA, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill, C. Lloyd Munson, Charles McLaughlan, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morrowski; William C. Dixon and Robert J. Rubin, Esqs., appearing for the Government; Ben Margolis, George Anderson and Robert W. Kenny, Esqs., appearing as counsel for said defendants who are present, and the jury being present, it is ordered that the trial proceed.

Attorney Margolis makes the closing argument in behalf of the defendants. At 10:40 a.m. the jury is admonished and court recesses.

At 11:00 a.m. the Court reconvenes, all being

present as before including the jury. Attorney Margolis resumes his argument. At 12:00 noon the jury is admonished and court recesses.

At 3:03 p.m. Court reconvenes, all being present as before, including the jury. Attorney Dixon makes makes closing argument in behalf of the Government. At 4:00 p.m. court recesses.

At 4:25 p.m. the Court instructs the jury. At 5:25 p.m. Bailiffs Brand, Strong, and Mrs. Terry Lundy are sworn to care for the jury and the jury thereupon retires to the jury room in the custody of said bailiffs. [79]

At 9:45 p.m. the jury returns to the court room and the Court asks them if they have arrived at a verdict, to which the foreman replies they have. The Court instructs the clerk to read the verdict, which is as follows:

* * * *

and orders the verdict filed. The jury is polled and all the jurors answer yes, that it is their verdict. The jury is excused until further notice. All defendants are present in court except Otis Sawyer who was excused by the Court earlier. Attorney Ben Margolis states he will move for a new trial. Attorney Dixon states he has no objection to referring the matter to the Probation Officer. The Court orders all further proceedings versus all defendants continued to May 21, 1947, 2:00 p.m. and each and all defendants are directed to return at that hour and in the meantime may remain on present bond. The Court orders Exhibits 43, 44, 45, 42, 42-B, 42-A and 45-A returned and same are returned in open court. [80]

In the District Court of the United States Southern District of California Central Division

No. 18842-CRIM.

UNITED STATES OF AMERICA,
Plaintiff,

VS.

LOCAL 36 OF INTERNATIONAL FISHER-MEN and ALLIED WORKERS OF AMERICA, JEFF KIBRE, GILBERT ZAFRAN CLIFFORD C. KENNISON, F. R. SMITH, GEORGE KNOWLTON, OTIS W. SAWYER, W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR D. HILL, C. LLOYD MUNSON, CHARLES McLAUCHLAN, ROBERT M. PHELPS, BURT D. LACKYARD, and RAY J. MORKOWSKI, Defendants.

VERDICT

We, the Jury in the above-entitled case, find the defendant, Local 36 of International Fishermen and Allied Workers of America Guilty as charged in the Indictment; find the defendant Jeff Kibre Guilty as charged in the Indictment; find the defendant Gilbert Zafran Guilty as charged in the Indictment; find the defendant Clifford C. Kennison Guilty as charged in the Indictment; find the defendant F. R. Smith Guilty as charged in the Indictment; find the defendant George Knowlton

Guilty as charged in the Indictment; find the defendant Otis W. Sawyer Guilty as charged in the Indictment; find the defendant W. B. McComas Guilty as charged in the Indictment; find the defendant Harry A. McKittrick Guilty as charged in the Indictment; find the defendant Arthur D. Hill Guilty as charged in the Indictment; find the defendant C. Lloyd Munson Guilty as charged in the Indictment; find the defendant Charles McLaughlin Guilty as charged in the Indictment; find the defendant Robert M. Phelps Guilty as charged in the Indictment; find the defendant Burt D. Lackyard Guilty as charged in the Indictment; and, find the defendant Ray J. Morkowski Guilty as charged in the Indictment.

A. S. PATRICK,

Foreman of the Jury.

Dated: Los Angeles, California, May 7th, 1947.

[Endorsed]: Filed May 7, 1947.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

The defendants Local 36 of the International Fishermen and Allied Workers of America, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill,

- C. Lloyd Munson, Charles McLaughlin, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morkowski, and each of them, move the Court to arrest the judgment against defendants, and each of them, for the following reasons:
- 1. The indictment does not state facts sufficient to constitute an offense against the United States.
- 2. The Court is without juristiction of the offense under the indictment herein in that the indictment was returned [82] by a grand jury improperly selected in each and all of the particulars set forth in defendants' motion to dismiss on the grounds that the Grand Jury was improperly selected.

GLADSTEIN, ANDERSEN, RESNER, SAWYER & EDISES, ROBERT W. KENNY, KATZ, GALLAGHER & MARGOLIS.

By /s/ BEN MARGOLIS, Attorneys for Defendants.

Received Copy of the within Motion in Arrest of Judgment this 12th day of May, 1947.

WM. C. DIXON, lm.
Attorney for Plaintiff.

[Endorsed]: Filed May 12, 1947.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL

The defendants Local 36 of the International Fishermen and Allied Workers of America, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill, C. Lloyd Munson, Charles McLaughlin, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morkowski, and each of them, move the Court for judgment of acquittal or for a new trial for the following reasons:

- 1. The Court erred in denying defendants' motion to dismiss the indictment on the grounds that the Grand Jury which returned said indictment was improperly selected in the respects set forth in said motion.
- 2. The Court erred in denying the challenge to and motion to strike out the entire trial jury panel.
- 3. The Court erred in denying defendants' motion for acquittal made at the conclusion of the Government's case.
- 4. The Court erred in denying defendants' motion for acquittal made at the conclusion of the evidence.
- 5. The verdict is contrary to the weight of the evidence.

- 6. The verdict is not supported by substantial evidence.
- 7. The Court erred in sustaining objections to questions put to various witnesses and in refusing to admit evidence offered as set forth in each and all of the oral and written offers of proof made by defendants, and in sustaining objections to the said offers of proof and each and every part thereof.
- 8. The Court erred in admitting testimony of various witnesses to which objections were made, and particularly in admitting, over objections, secondary evidence without any opportunity of any examination of the books and records which constituted the best evidence.
- 9. The Court erred in charging the jury and refusing to charge the jury as requested.

GLADSTEIN, ANDERSEN, RESNER, SAWYER & EDISES, ROBERT W. KENNY, KATZ, GALLAGHER & MARGOLIS.

By /s/ BEN MARGOLIS,
Attorneys for Defendants.

Motion for Judgment of Acquittal or for New Trial.

Received copy of the with this 12th day of May, 1947.

/s/ WM. C. DIXON,
Attorney for Plaintiff.

[Endorsed]: Filed May 12, 1947.

At a stated term, to wit: The February Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 21st day of May, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Cause.]

This cause coming on for hearing on (1) motions of the defendants for judgment of acquittal or for a new trial, and in arrest of judgment, pursuant tion to notice thereof filed May 12, 1947, and (2) motion of the National Automobile & Casualty Insurance Co. to restore to the calendar said petitioner's motion to set aside order of forfeiture heretofore made and exonerate bond of defendant Otis W. Sawyer, pursuant to notice thereof filed May 13, 1947; and (3) on the report of the Probation Officer and sentence of each of the defendants' herein; Wm. C. Dixon and Robert J. Rubin, Special Assistants to the Attorney General, appearing as counsel for the Government; Thos. P. Sawyer, Esq., appearing as counsel for the National Automobile & Casualty Insurance Co.; Messrs. Katz, Gallagher and Margolis by Ben Margolis, Esq., and Robert W. Kenny, Esq., appearing as counsel for the defendants; Defendants Kibre, Zafran, Kennison, Smith, Knowlton, Sawyer, McComas, McKittrick, Hill, Munson, McLaughlan, Phelps, Lack-yard, and Morkowski being present:

Attorney Margolis argues in support of the said motions; Attorney Kenny argues in support of the said motions; Attorney Rubin makes a statement;

It is ordered that (1) motions of the defendants for judgment of acquittal or for a new trial, etc., are denied; [88]

Attorney Sawyer makes a statement in support of the said motion (2) to vacate order of forfeiture;

It is ordered that motion (2) of National Automobile & Casualty Insurance Co is granted and order of forfeiture is set aside.

Attorney Dixon makes certain recommendations regarding sentence of each defendant herein and in addition thereto recommends the maximum fine of \$5,000 be imposed upon the defendant Union, the judgments being as follows: [89]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

ARTHUR D. HILL

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Arthur D. Hill,

appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

> /s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [90]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

vs.

CLIFFORD C. KENNISON

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Clifford C. Kennison, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [91]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

JEFF KIBRE

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Jeff Kibre, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him,

and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$2000.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [92]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

GEORGE KNOWLTON

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, George Knowl-

ton, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

> /s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [93]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

BURT D. LACKYARD

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Burt D. Lackyard, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [94]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

LOCAL 36 OF INTERNATIONAL FISHER-MEN & ALLIED WORKERS OF AMERICA

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Local 36 of I. F. & A. W. A., appearing by counsel, Ben Margolis, Geo. Andersen and Robert W. Kenny, Esqs., and its local representative and secretary, Gilbert Zafran, and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade and commerce and the defendant having been now asked whether it has anything to say why

judgment should not be pronounced against it and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, is hereby ordered to pay a fine unto the United States of America in the sum of \$3000.00, and that execution levy forthwith.

It Is Further Ordered that the defendant be granted a stay of execution until 12 noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [95]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

W. B. McCOMAS

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, W. B. McCo-

mas, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

> /s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [96]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

HARRY A. McKITTRICK

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Harry A. Mc-Kittrick, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$1500.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [97]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

CHARLES McLAUCHLAN

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Charles Mc-Lauchlan, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. eKnny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him,

and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$2000.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [98]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

RAY J. MORKOWSKI

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Ray J. Morkowski, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$1500.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

> /s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [99]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

C. LLOYD MUNSON

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, C. Lloyd Munson, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [100]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

ROBERT M. PHELPS

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Robert M. Phelps, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him,

and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [101]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

vs.

OTIS W. SAWYER

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Otis W. Saw-

yer, appearing in proper person, and by counsel, Ben Margolis, George Anderson and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

> /s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [102]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

F. R. SMITH

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U.S.C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, F. R. Smith. appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [103]

District Court of the United States, Southern District of California, Central Division

No. 18842

UNITED STATES

VS.

GILBERT ZAFRAN

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Gilbert Zafran, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why

judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$2000.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL, United States District Judge.

[Endorsed]: Filed May 21, 1947. [104]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Names and addresses of defendants and appellants:

Local 36 of the International Fishermen and Allied Workers of America, Berth 73, Fishermen's Wharf, San Pedro, Calif.;

Jeff Kibre, 428 N. Sycamore Street, Los Angeles 36, Calif.;

Gilbert Zafran, 920 37th Street, San Pedro, Calif.;

Clifford C. Kennison, Knoll Hill Trailer Court, San Pedro, Calif.;

F. R. Smith, $622\frac{1}{2}$ N. 97th Street, Los Angeles, Calif.;

George Knowlton, 717 Weymouth Avenue, San Pedro, Calif.

Otis W. Sawyer, 2417 Sonoma Ave., Torrence, Calif.; [105]

W. B. McComas, 842 N. Cherokee, Hollywood 38, Calif,;

Harry A. McKittrick, P. O. Box 901, Santa Monica, Calif.;

Arthur D. Hill, 1810 Ocean Front, Newport Beach, Calif.;

C. Lloyd Munson, 421 31st Street, Newport Beach, Calif.;

Charles McLaughlan, Route 4, Box 549-C, Santa Ana, Calif.;

Robert M. Phelps, 6257 Tipton Way, Los Angeles, Calif.;

Burt D. Lackyard, 306 W. 1st Street, Santa Ana, Calif.;

Ray J. Morkowski, 6752 Elmore Street, San Diego, Calif.;

Names and addresses of defendants' and appellants' attorneys:

Katz, Gallagher & Margolis, 111 W. 7th St., Los Angeles, Calif;

Gladstein, Andersen, Resner & Sawyer, 240 Montgomery Street, San Francisco, Calif.;

Kenny and Cohn, 629 S. Hill Street, Los Angeles 14, Calif.;

Offense:

Violation of Section 1, Title 15, U. S. Code.

Concise statement of judgment or order:

The judgments and sentences of May 21, 1947, whereby the following fines were imposed:

Local 36 of the International Fishermen and	
Allied Workers of America\$3,000.00)
Jeff Kibre 2,000.00)
Gilbert Zafran)
Charles McLaughlan 2,000.00)
Ray J. Morkowski)
Harry A. McKittrick)
Clifford C. Kennison)
F. R. Smith)
George Knowlton)
Otis W. Sawyer)
Arthur D. Hill 10.00)
C. Lloyd Munson 10.00)
Robert M. Phelps)
Burt D. Lackyard 10.00)
W. B. McComas)

The above named defendants and appellants, and each of them, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit from the above stated judgments.

Dated: May 22, 1947.

KATZ, GALLAGHER & MARGOLIS, GLADSTEIN, ANDERSON, RESNER & SAWYER, KENNY AND COHN,

By /s/ ROBERT W. KENNY.

Attorneys for Defendents and Appellants. [107]

Received copy of the within Notice of Appeal this 23rd day of May, 1947.

WILLIAM C. DIXON, Attorney for Plaintiff.

[Endorsed]: Filed May 23, 1947. [108]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 117 inclusive contain full, true and correct copies of Indictment; Motion by Defendants to Dismiss the Indictment; Minute Orders Entered October 14 and November 12, 1946; Notice of Motion to Dismiss the Indictment and of Challenge to and Motion to Strike Out the Entire Trial Jury Panel; Minute Orders Entered March 12, April 9, April 10, April 16 and April 18, 1947; Defendants' Proposed Instructions to the Jury; Minute Order Entered May 7, 1947; Verdict; Motion in Arrest of Judgment; Motion for Judgment of Acquittal or for New Trial; Minute Order Entered May 21, 1947; Judgment and Commitment as to each of the appellants; Notice of Appeal;

Designation of Portions of the Record; Stipulation and Order re Exhibits; and two Stipulations and Orders Extending Time to File Record on Appeal which, together with Original Plaintiff's Exhibits at the hearing on the Motion to Dismiss etc. Nos. 1, 2, 3, 4-A to 4-L, inclusive, 5-A to 5-F, inclusive and 6 and Original Defendants' Exhibits at the hearing on the Motion to Dismiss etc. A to I, inclusive, J-1, J-2, K-1 to K-3, inclusive, L-1 to L-4, inclusive, M to V, inclusive, W-1, W-2, X-1, X-2, Z-1, Z-2, AA-1, AA-2, BB, CC-1, CC-2, DD-1, DD-2, EE-1, EE-2, FF-1, FF-2, GG-1, GG-2, HH-1 HH-2, and II to MM, inclusive; Original U. S. Exhibits at the trial Nos. 1, 1-C, 1-D, 2 to 41, inclusive, 47 to 61, inclusive, 201 to 220, inclusive, 224 to 228, inclusive, 230, 231, 233, 236, 238, 240, 243 to 246, inclusive, 252, 301 to 304, inclusive, 307, 310, 311, 312, 313, 314, 317, 319 to 322, inclusive, 328, 332 to 334, inclusive, 401 to 406, inclusive, 406-A, 409, 411, 413, 414, 504, 503 and 508 and Original Defendants' Exhibits at the trial A to G, inclusive, H-1 to H-4, inclusive, I-1 to I-3, inclusive, J to W, inclusive, W-1, W-2, X, X-1, Y, Z, AA, BB, CC-1 to CC-9, inclusive, DD, EE, FF, GG, GG-1, GG-2, HH to SS, inclusive and copy of 37 volumes of Reporter's Transcripts, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$31.20 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 15th day of August, A.D. 1947.

[Seal] EDMUND L. SMITH, Clerk,

By /s/ THEODORE HOCKE, Chief Deputy Clerk.

In the District Court of the United States in and for the Southern District of California, Central Division

Honorable Peirson M. Hall, Judge Presiding
No. 18842—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

VS.

LOCAL 36 OF INTERNATIONAL FISHER-MEN & ALLIED WORKERS, et al., Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON TRIAL

Los Angeles, California March 18, 1947

Appearances:

For the Plaintiff: James M. Carter, United States Attorney, Los Angeles 12, California, by

William C. Dixon and Robert J. Rubin, Special Assistants to Attorney General, Los Angeles 12, California; Benjamin F. Schwartz and Jesse R. O'Malley, Special Attorneys, Antitrust Division, Los Angeles 12, California. [28*]

For all Defendants except Defendant Sherman: Katz, Gallagher & Margolis; by Ben Margolis, Esq.; and Gladstein, Andersen, Resner, Sawyer & Edises; by George Andersen, Esq.; and Cohn and Kenny; by Robert W. Kenny, Esq.

For the Defendant Sherman: Arthur Garrett, Esq.

* * *

The Court: Very well. Ladies and gentlemen of the jury, I think before we proceed any further, my remarks to you last night probably indicated—they were intended to indicate that I might observe a custom which is not very common here of placing the jury, throughout the whole of the trial, in the custody of the marshal; in other words, to lock you up. I have come to the conclusion, in view of the length of the trial, which is estimated to be probably [48] at least a month, that I will not do so, but I have stated to counsel that in the event that anything occurs which in my judgment would indicate the necessity for that, that I would do so.

I wish, therefore, to say to each of you, that in the event any communication by anyone concerning this case is made to you or attempted to be made to you, or to any members of your family, directly or

^{*} Page numbering appearing at top of page of Reporter's certified Transcript of Record.

indirectly, while this case is in trial, other than in this court room, that you communicate it forthwith to me through my clerk or my secretary.

Before the government makes its opening statement; I submitted to counsel yesterday what we call a form of instructions concerning the rules of evidence, which are always read at the conclusion of the trial,—let's see how many of you have never served on a jury, or who have served.

(There was a raising of hands by the jury.) The Court: Only one of the fourteen has served on a jury heretofore. Then it might be helpful to you in advance in weighing the evidence or assisting you in the trial if I should read to you some of the general instructions of that nature.

First of all, in the trial of a law suit the one having the affirmative—and in a criminal case the government has the affirmative always—has the burden of proof. The one who has the burden of proof puts their evidence on [49] first, they call their witnesses, and they conduct an examination, interrogation of the witnesses by what is called a direct examination. That is to say, the direct examination does not ordinarily permit leading or suggestive questions, the idea being that the questions shall be asked and that the witness shall speak his mind without any suggestion from counsel. But after the party who has produced the witness is through, the counsel for the other side have a right to cross-examine that witness.

Now, those of you who have children often hear the expression among them that somebody is trying to cross them up. I think that expression probably originated from the cross-examination of witnesses in court rooms, because in a cross-examination the counsel for the person who does not produce the witness is entitled to test their veracity by leading questions, suggestive questions, and generally to ask questions of a different nature. So if during the trial somebody asks one kind of a question and the court sustains the objection to it, you must not be concerned with that; that is a rule of evidence which I must govern.

The trial usually opens with a statement on behalf of the party having the burden of proof, which is called an opening statement to the jury, which is limited to a brief statement, without argument, of what they intend to prove, and how they intend to prove it. That is followed by a statement [50] on behalf of the defendants of a similar nature, except that the defendants can reserve their right to make what they call the opening statement until after the conclusion of the government's case. In other words, instead of making it now, why, they may want to wait until all the evidence is in and then make their opening statement.

Now, these instructions I am about to read to you will be read to you at the conclusion of the trial as heretofore indicated to you. It is your duty as jurors to follow the law as I shall state it to you, and, on the other hand, it is your exclusive province to determine the facts in the case and to consider and weigh the evidence for that purpose. And that authority thus invested in you is not an arbitrary power but must be exercised with sincere judgment, sound discretion, and in accordance with the rules

of law which I shall state to you in the instructions.

If in the instructions which I am reading to you now, or those which I read to you at the conclusion of the trial, any direction or rule or idea is stated to you in varying ways, or a subject-matter in the instructions is treated first or last, no emphasis is intended to be placed on that instruction, and none must be inferred by you, and for that reason you are not to single out a certain sentence or any individual point or any individual instruction and ignore all the others, but you have to consider all the instructions [51] together and as a whole, and to regard each in the light of all the others.

Now, evidence may be either direct or indirect. Direct evidence is that which proves a fact in dispute directly without an inference or a presumption, and which in itself, if true, conclusively establishes the fact. Indirect evidence is that which tends to establish a fact in dispute by proving another fact which, though true, does not of itself conclusively establish the fact in issue but which affords an inference or a presumption of its existence. Indirect evidence is of two kinds, namely, presumptions and inferences.

A presumption is a deduction which the law expressly directs to be made from particular facts, and unless declared by law to be conclusive—and I don't know of any conclusive presumptions that will arise in this case—a presumption may be controverted by other evidence either direct or indirect, but unless so controverted the jury is bound to find according to that presumption.

Now, an inference, on the other hand, is a deduction which the reason of the jury directs shall be drawn from the facts which are proved. An inference must be founded on a fact or facts proved and be such a deduction from those facts as is warranted by consideration of the usual propensities or passions of men, the particular propensities or passions of the persons whose conduct or acts are in [52] question, or the course of business or the course of nature. And the word "propensity" as used in these instructions means any natural or habitual inclination or tendency.

You are not bound to decide any fact or the main issue in conformity with the testimony or the number of witnesses which does not produce conviction in your mind as against the declarations of a lesser number of witnesses, or as against a presumption or other evidence which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of a greater number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does not mean that you are to decide an issue by the simple process of counting the number of witnesses who have testified, but it does mean that the final test is not in the relative number of witnesses but in the relative convincing force of the evidence.

The testimony of one witness entitled to full credit is sufficient for the proof of any fact in accordance with such testimony even if a number of witnesses have testified to the contrary, if from the whole case, considering the credibility of the witnesses, and after weighing the various other factors in the evidence, the jury believes the one witness.

In weighing the testimony of witnesses it is proper for [53] you to consider those factors of human nature which, either with or without any wrongful intention, may obstruct the giving of perfeetly true testimony. Those factors are suggested by these questions: Did the witnesses have a full opportunity to learn the truth? If so, did the witness have the intelligence and purpose to ascertain the facts? What was the advantage or disadvantage from the point of observation? Does the evidence show that the witness had a motive for favoring or an inclination to favor any party? Was he or she, in other words, a biased or an impartial witness? What degree of intelligence, what quality of memory, and what grade of moral purpose, so far as concerns this case, were revealed by the witness' appearance, manner of testifying, and all the other evidence in the case? Was the testimony or is the testimony reasonable and consistent within itself and with uncontradicted facts? Is there any timidity or physical handicap, lack of ability in self-expression, or other conditions that place a witness at a disadvantage or might cause his or her testimony to appear on the surface as being less trustworthy than it really was. Was the witness, without fault of his own, confused or embarrassed and thus placed in a light not truly representative?

Should you consider any of these questions, either in your own private reasoning or in open discussion after the case is finally submitted to you, if it is, you must look [54] for an answer only to the evidence admitted in the trial of this case.

Any evidence that has been received of an act, omission or declaration of a party which is unfavorable to his own interest should be considered and weighed by you like any other admitted evidence, but evidence of the oral admission of a party other than his own testimony in this trial ought to be viewed by you with caution.

From time to time counsel for one or the other of the parties will, no doubt, interpose objections to questions or to evidence. Counsel not only have the right, but they have a duty to make any and all objections which are deemed advisable or appropriate by them, and no inference or presumption can or should be indulged in one way or the other by reason of the interposition of any objection on behalf of any counsel.

At times throughout the trial the court will probably be called upon to pass upon the question whether or not certain offered evidence might or might not be properly admitted. You are not to be concerned with the reasons for any rulings which might be made, nor to draw any inference from them. Whether offered evidence is admissible or not is purely a question of law. And in admitting evidence to which an objection might be made, the court does not determine what weight should be given to that evidence, nor [55] does it pass on the credibility of the witnesses. As to any offer of evidence that might be rejected by the court, of course you must not consider that evidence. As to any question to which an objection might be sustained,

you must not conjecture as to what the answer might be, or the reason for the objection.

The law does not require the accused to prove his innocence, which in many cases might be impossible; but on the contrary the law requires the prosecution to establish beyond a reasonable doubt and by legal evidence the guilt of any person charged. And if the government fails to so prove, you should find the accused persons not guilty.

You must not allow yourselves to be led to convict the accused in this case in order to satisfy a fear that some offense may go unavenged or unpunished, or for the purpose of deterring others from the commission of like offenses. No such argument or reason can be weighty enough to justify you in laying aside that just and humane rule of law which requires you to acquit an accused person unless every fact necessary to establish his guilt is proved to you beyond a reasonable doubt and to a moral certainty.

The rule concerning circumstantial evidence does not permit you as jurors to indulge in speculation or surmise, conjecture or guesswork, in order to supply any element of any offense alleged by a prosecuting witness or charged by [56] the government in this case to have taken place where proof of such element does not appear beyond a reasonable doubt and to a moral certainty. Speculation, surmise, conjecture or guesswork can never be submitted in lieu of proof to justify conviction of an accused person.

And suspicion is not evidence. Mere suspicion, however strong, is not sufficient to establish any

fact whatsoever necessary to constitute the crime charged. Mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of evidence support the allegations of the indictment. Nor is it sufficient that upon the doctrine of chance it is more probable that the accused might be guilty than innocent. The accused persons must be proven guilty so clearly that there is no reasonable theory upon which they can be said to be innocent, or he, individually, when all of the evidence is considered together. Mere opportunity of an accused person to commit a crime charged is insufficient to justify a verdict, and in every criminal case the proof must substantially correspond to the material allegations of the indictment, which, I take it, will shortly be read, or stated to you in brief by the government.

By the arrest of the defendant or by the return of an indictment no presumption whatsoever arises to indicate that a defendant is guilty or that he had any connection with or [57] responsibility for the act charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. There is only one offense charged here. Mere suspicion, as I indicated, will not authorize a conviction, and a reasonable doubt is such a doubt as you may have in your minds when after fairly and impartially considering all the evidence you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs. Reasonable doubt is not mere possible or imaginary doubt, nor is it a bare conjecture, for it is difficult to prove anything to an absolute certainty.

You are to consider the strong probabilities of the case, and a conviction is justified only when sufficient probabilities exclude all reasonable doubt as the same has been defined to you.

Without it being restated or repeated to you again, either now in this part of the trial or subsequently in the final instructions, you are to understand that the requirement that a defendant's guilt be shown to be beyond a [58] reasonable doubt is to be considered with and accompanying each and every instruction which might be given to you.

In judging evidence you are to give it a reasonable and a fair construction, and you are not authorized, as I indicated, because of any feeling of sympathy or bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict or conclusion, when were it not for such feeling or bias you would reach a contrary conclusion. And whenever after a careful consideration of all of the evidence your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is reasonable doubt in your minds as to whether or not the evidence is so balanced, the conclusion of innocence upon such occasion must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who might be called upon to testify in this trial, or upon the documentary evidence which might be produced. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity, or by his motives or by contradictory evidence. In judging the credibility of the witnesses who might be called, you may believe the whole or any part of the evidence of any witness, or you may [59] disbelieve the whole or any part of it as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all the circumstances under which the witness testified, his demeanor, his manner while on the stand, the intelligence of the witness, and the other things that I have outlined to you, as well as the relation which the witness might bear to the government or to any of the defendants, the manner in which a witness might be affected by the verdict, and the extent to which the witness might be contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his testimony and his credibility.

If a witness is shown knowingly to have testified falsely on a trial touching any material matter you should distrust his testimony in other particulars, and in that case you are at liberty to disregard and reject the whole of that witness' testimony. The defendants may or may not offer themselves as witnesses in this case. If they do not, you are not to draw any inference or presumption concerning their not taking the stand. In the event a defendant does take the stand, you are to estimate and determine the credibility of the defendant in the same manner as you would consider the testimony of any other witness, and it is proper to consider all the [60] matters that have been suggested to you in that connection, including the interest which the defendant has in his own case, his own hopes and his fears, and what he might have to gain or lose as the result of any verdict.

You are not limited in your consideration of the evidence to the bald expression of any witness; you are authorized to draw such inferences as I have defined an inference from the facts and circumstances which might be proved as seem justified in the light of your experience as reasonable men and women. [61]

Opening Statement in Behalf of the Government

Mr. Dixon: Ladies and gentlemen of the jury, as his Honor has already indicated, it is now the privilege of the Government to make to you its opening statement, the purpose of which is to tell you something about this case and what the Government expects its witnesses and evidence to show.

Now, as you have probably already surmised, this case does involve the fishing industry. The fishing industry, however, of the west coast of our country

is a large industry, and in this case we are going to be concerned only with a portion of that industry, namely, that which relates to the catching and selling of fresh fish in the ports of Southern California from Morro Bay down to the waters of Mexico. The fish involved in this case are of that character which is caught and sold to dealers who, in turn, process them, filet the fish, and prepare them for sale to wholesalers and retailers in the area and for shipment outside the state of California to various other portions of our country.

Now this case does not involve, therefore, the canning part of the fishing industry, which is an entirely separate and different part of the fishing business, but as I have suggested it is confined to the fresh fish portion of the fishing industry in the southern portion of the state of California.

Now this industry, during an annual period of time, [62] covers the catching and selling of approximately 20 million pounds of fresh fish. That is to say, that amount of fish is caught generally outside the territorial waters of the United States in fishing boats and brought into the ports within the area that I have described, which includes the area from Morro Bay to the Mexican waters, and those ports in that area, the principal ones of which are the ports of San Pedro, San Diego and Newport Beach.

Now there are other ports into which the fish are brought in this area, namely, Santa Barbara, Santa Monica, Redondo, and Morro Bay. The bulk of the fresh fish involved in this case, however, is caught, as I suggested, outside the territorial waters of the United States, and is brought into those various ports and at those ports it is sold to dealers who handle the fish, that is, they process the fish, handle it by icing and fileting the fish and then reselling the fish to wholesalers or dealers or consumers within and outside the state of California.

There is also about a million pounds of fresh fish which is shipped into this area from outside the state of California, and that will be referred to during the course of this trial as shipments of fish from the states of Washington and Oregon into the area that you will become more familiar with as this trial progresses.

Now the action here, as his Honor has already indicated, [63] is in the nature of an indictment, which merely states the charges made here by the Government against the defendants and details the charges. It is, of course, not evidence as his Honor has already instructed you.

Now we have in this case some 15 individual defendants and an association, that is, an unincorporated association, which is known as Local 36 of the International Fishermen & Allied Workers of America. Seven of the individual defendants in this case, namely, the defendants Kibre, Zafran, Kennison, McKittrick, Munson, McLauchlan and Morkowski, are officials of that particular association. The other individual defendants are better described in the indictment as fishermen and also as chairman, for example, as is the case of Mr. Smith, of the strike committee, member of the

strike committee Mr. Knowlton, Mr. Sawyer as a picket captain, the defendant Phelps as a member of the negotiating committee, the defendant Lackyard as a member of the negotiating committee and strike picket captain.

Now that description is merely indicative of their connection with the association and the activities that I will refer to more in detail in a moment.

Now of course the term "fisherman" is a broad term because lots of people like to call themselves fishermen if they go out and fish purely for their own personal pleasure. Fishermen as used in our case, and as the evidence will be submitted [64] to you in connection with the allegations made in this indictment, refers to an individual or a group of individuals who own, lease or operate a particular boat for the purpose of engaging, on their own account, in the business of catching fresh fish and bringing them to the ports that I have described for the purpose of sale to the dealers.

Now the defendant association here is composed, we expect the evidence to show, of fishermen in that sense of the term. In other words, the indictment charges them with being independent businessmen engaged in business on their own account and who operate fishing boats for their own account and profit.

The indictment further alleges that the fishermen who are members of this defendant association, which calls itself Local 36 of the International Fishermen & Allied Workers of America, are not

employees, workers or laborers who receive a salary or wage for their work or labor, but, as I suggested, are rather independent businessmen engaged in the business of catching and selling fish for their own account and profit.

The indictment further alleges that after the fish are caught by the fishermen, members of the association, that they sell their catch, that is, whatever they catch when they go out to fish, that they sell it directly to the dealers and they do not in any sense of the term act collectively through this association that I have named in the catching, producing, preparing for marketing, processing and handling their catch. [65]

Now I have suggested that to you because we believe the evidence will clearly show that the defendant association here, this Local 36, the membership of that association, is composed principally of fishermen in the sense that I have described the term who are engaged in business on their own account and who, after they have caught the fish that they go out to catch, bring that into the ports involved in this case and sell it directly to the dealers or the persons who then proceed to process the fish and make it available for the wholesalers or the retailers or who ship it thereafter from the points at which they buy it from the fishermen to not only points inside the state of California but also to various points outside the state of California.

Now with that background of the fishing industry, the defendants here, not only this association but also the individuals named, are charged with

having been engaged, beginning some time prior to May, 1946, the exact date being unknown to the grand jury, in a wrongful and unlawful combination and conspiracy, formed and carried out in part within the southern district of California, central division—that is in this district in which this case is being heard—and this is the conspiracy that the defendants are charged with being engaged in: to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of the fresh fish caught in the fishing area; and in [66] addition to that, to prevent the dealers who do not agree to pay the prices so fixed by the members of the combination and parties to the conspiracy from obtaining, selling or shipping any fresh fish from any other source.

In other words, the defendants here, as members of this association and the association itself, are charged with having been engaged in a combination and conspiracy to fix the price at which they would sell the fish to the dealers and then in addition thereto to force, or rather prevent, the dealers who did not agree to pay that price agreed upon by the defendants in this conspiracy, from getting or obtaining fish from any other sources.

That is the broad and general charge that is made by the Government here and which we expect the evidence will prove to be the combination and conspiracy in which the defendants engaged in this case.

The indictment then proceeds to go on in detail to show what the particular provisions or more detailed nature of this conspiracy really was, and it charges that the defendants agreed to fix a minimum price for the fish to be sold by the fishermen to the dealers, and then that where the OPA had fixed a price—and this was back in 1946, before the OPA went out of existence—that that price would be the principal price at which the fishermen would sell their fish to the dealers, and that in the event the OPA ceilings were removed [67] that then that OPA price would be the floor or the lowest price at which the fishermen members of this association would sell their fish to the dealers.

And then the defendants are further charged with having agreed to reduce this price-fixing agreement that I have referred to to a contract form, and a copy of that contract is affixed to the indictment and I shall refer to it in a moment, and to thereafter impose that contract upon the dealers or the buyers of their fish by picketing and boycott methods and to prefer——

Mr. Kenny: I must interrupt at this time and ask the Court to instruct the jury to disregard the remarks of counsel about picketing and boycott methods, and cite it as misconduct on the part of the prosecution.

I would like to be heard at length on the law unless your Honor agrees with me.

The Court: If it is alleged in the indictment— Mr. Dixon: I would suggest counsel read the indictment, because I am referring to paragraph 13(f) on page 7, and if there is any question in your mind about it, counsel, I will read it. Mr. Kenny: I will concede it is in the indictment, but it is not an offense against the Sherman Act.

The Court: The objection is overruled.

Mr. Dixon: Since counsel has referred to the fact, I [68] will read the allegation that I was about to summarize in the interests of brevity.

The Court: On that point, I have heard counsel at length on whether or not the indictment states an offense, and if he confines himself in his opening statement to the indictment, either the language of it or what he expects to prove under it, that matter has been settled.

Mr. Dixon: I will read this particular portion of the indictment, and this is what the Government charges, among other things, that the defendants agreed to do in this conspiracy——

The Court: Just a moment.

Juror Patrick: Your Honor, may I ask, is there any objection if we take notes as we go along in this case? Any objection to that?

Mr. Margolis: We have no objection.

The Court: There will be no objection if it will aid the individual jurors. I have never followed the practice, but if the parties have no objection to any juror taking notes—

Mr. Margolis: I think we might have an appropriate instruction at the end of the case as to how the notes would be used, but we have no objection to the use of notes.

The Court: Does the Government have any objection to the use of notes? [69]

Mr. Dixon: We have no objection, your Honor, if the jurors wish to do it. It is rather an unusual practice, I will say.

The Court: Yes, it is an unusual practice, and you are liable to find yourself with so many notes that it might be more confusing in the long run than it would be otherwise. However, none of the parties object to it so if you desire, you may.

In that connection, it must be remembered that the reporter's transcript is the official transcript of what transpires and that should recurrence be made at any time or reference to what did transpire, it is the reporter's transcript which must govern over the notes.

Mr. Garrett: May the jury be cautioned at this time, if notes are taken, that the opening statement of the lawyer for the Government is not evidence?

Mr. Andersen: We join in that request, your Honor.

The Court: The jury is cautioned that the opening statement of the lawyer for the Government is not evidence, and the opening statement of the lawyers for the defendants is not evidence, and statements made by the counsel during the trial are not evidence.

Mr. Dixon: May we proceed now?

The Court: Go ahead.

Mr. Dixon: Section (f) of Paragraph 13 charges that the [70] defendants:

"(f) agree to reduce the foregoing agreement and understanding described in Paragraph 13(a) to (e), inclusive, to written contract form, and to impose said contract upon fish dealers who refuse to sign the same by picketing and boycott methods, and to prefer fish dealers who sign said written contract, and to refuse to sell or deliver any fish caught by fishermen members of Local 36, IFAWA to fish dealers who do not enter into said contract;"

Then the indictment further charges that the defendants:

"(g) agree to prevent fish dealers who do not enter into said agreement and contract from securing any supply of fresh fish or crustaceans from any other fishermen or other source by boycotting and establishing picket lines around the places of business of such dealers;"

And to further:

"(h) agree to prevent fish dealers who do not enter into the aforesaid agreement and contract from shipping or otherwise transporting through their own or other means of transportation any fish purchased or acquired by said dealers;"

And then to:

"(i) agree to boycott and picket any concern [71] or individual accepting from dealers who do not enter into said written contract, any fresh fish or crustaceans for shipment from said fishing ports to points in or outside the state of California;"

Further the indictment charges the defendants (I am reading Section (j) of Paragraph 13):

"(j) agree to boycott and picket any concern or individual delivering or attempting to deliver to the usual place of business of non-signing dealers, any fresh fish or crustaceans shipped to the usual place of business of such non-signing dealers, by brokers or other dealers located in and outside the state of California;"

I mention that because we expect the evidence here will show that the defendants endeavored to, and did, prevent the dealers in the areas described from securing any fish from outside sources that I have referred to, the states of Washington and Oregon; and then they further:

"(k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-signing dealers, or in lieu thereof, [72] had paid to Local 36, IFAWA, a stipulated picket fee."

In other words, we expect the evidence will show under that allegation that other fishermen who were not members of this defendant association were prevented from fishing without getting a clearance card from the defendant association to permit them to fish, and then after they got the clearance card, which they could only get after they had paid a picket fee to the defendant association, or in lieu thereof had performed picket duty, they could sell then the fish that they caught only to the dealers who signed the contract that I have mentioned.

Now that, in general, is the charge made here in this indictment against the defendants, and we expect the evidence will show that as a result of this conspiracy the defendants entered into to fix the prices at which they would sell their fish to the dealers, and that on or about May 27, 1946, the defendant association notified the dealers that unless the form of contract, which is attached to the indictment and, as I suggested, I will refer to it in a moment, was signed by the dealers by May 28, 1946, no fish of any kind would be brought into the port of San Pedro starting 7:00 a.m. Wednesday, May 29, 1946, and that on and after that date the defendant association picketed and caused to be picketed the places of business of fish dealers located particularly in the ports of [73] San Pedro and Newport Beach who refused to sign the form of contract that I have mentioned, attached to the indictment, and further that they prevented the fish dealers from obtaining their normal supply of fresh fish from any other source, and that the defendant association notified the Railway Express Agency, Inc., that said company would be picketed by the members of the defendant association if the Railway Express Agency, Inc., accepted any fish from any San Pedro dealer for shipment to destination points in or outside the state of California where such dealer had not signed a contract with the defendant association, which contained the provisions set forth in the form of a contract attached to the indictment.

Now I am going to refer briefly to this contract that I have described generally. It is, as I suggested, attached to the indictment and will of course be introduced in evidence in this case.

This contract provides generally for the fixing of the prices at which the individual members of the association will sell their fish that they catch to the dealers who sign the contract, and it is, as I suggested, the OPA price that was taken as the price where there was an OPA price in effect at that time, and if the OPA price was removed then the former OPA price was to be the floor price, that is, no fish was to be sold below that price by any of the members of this association to any of the dealers, and it contains the provisions [74] I mentioned giving a preference to the dealers who bought from the members of the defendant association, and the contract also provides that the payment by the dealers who signed this contract and buy fish from the members of the association pursuant thereto shall be made directly to the individual fishermen who sell the fish.

Paragraph (d)(7) of the contract specifically states that "It is distinctly understood and agreed that the union (that is this Association Local 36 of the International Fishermen & Allied Workers of America) assumes no liability of any kind under the terms of this agreement, but is acting merely as a bargaining agency for its members."

Now we expect, ladies and gentlemen of the jury, that the evidence will sustain in every substantial particular the allegations of the indictment concerning the charges herein made against the defendants, and that the evidence will show that this defendant association, the membership thereof, was composed principally of fishermen who owned and

operate their own boats for their own account and profit. Some of them have on occasions taken two or three other members of the association with them when they go out to fish who do not have an interest in the boat perhaps, and those men who go out under those circumstances receive a share of the catch, that is, the proceeds from the sale of the catch, as their part of the venture when they go out to fish with the members of the association [75] who own, lease or control the boats which they are using in this enterprise.

Now the evidence in this case further will show that about 75 per cent of the fishermen in the area involved, using the term "fishermen" in the sense that I have described, and confining it to the fresh fish portion of the industry, are members of the defendant association.

Now the type of evidence which we expect to introduce to you to support the allegations herein made that the defendants have engaged in a combination and conspiracy to fix and determine the price at which the individual members of the association will sell their fish to the dealers within the area described, that the evidence will consist of two types: it will consist of testimony of witnesses who will testify concerning things and allegations that I have referred to; it will also, as has already been suggested by his Honor, consist of documentary evidence which will indicate and support the allegations and statements that I have made.

And upon that type of evidence, which we submit will support the charges made by the Government

in this case, we will ask you, after a full and fair and impartial hearing of all the evidence, to return a verdict here as is requested by the Government of guilty as to all defendants.

The Court: I see it is 5 minutes of 12:00 now. Do any of the defendants wish to make his statement before the evidence [76] begins or do you desire to reserve your opening statement? [77]

WAYNE B. CAVE

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

The Court: And may it now be stipulated that all the arguments made and briefs filed heretofore in connection with that matter may be deemed to have been made and filed at this time?

Mr. Dixon: So stipulated.

Mr. Garrett: So stipulated. [83]

Mr. Margolis: So stipulated.

The Court: And considered by the court. The objection is overruled. Proceed.

Direct Examination

By Mr. Rubin:

- Q. With what organization are you employed, Mr. Cave? A. The Los Angeles Times.
- Q. As a newspaper reporter, what locale is assigned to you as the base of your duties as a reporter?

(Testimony of Wayne B. Cave.)

A. The Harbor Area; Los Angeles and Long Beach Harbor.

- Q. Are you the marine editor of that area?
- A. Yes.
- Q. Now on the 29th day of May, 1946, were you at the Los Angeles Harbor? A. Yes.
- Q. In the morning of that day at what part of the Harbor were you?
- A. Well, I was in the press room until I got word there was a picket line—

The Court: What day is that, counsel?

Mr. Rubin: On the 29th day of May, your Honor.

The Court: 1946?

Mr. Rubin: 1946.

The Court: Very well.

The Witness: I got word there was a picket line at the [84] wholesale fish markets.

Mr. Margolis: I move to strike that portion of the answer referring to a picket line on the ground that it is incompetent, irrelevant and immaterial to any issue in this case.

The Court: It is not responsive to that particular question. He asked him where he was, and he said he was in the press room. The rest of the answer will be stricken and the jury instructed to disregard it on the ground that it is not responsive and hearsay.

- Q. (By Mr. Rubin): Where did you proceed from the press room?
- A. I got in my automobile and took my camera and went down to the wholesale fish market.

- Q. Is that the wholesale fish market in San Pedro?

 A. In San Pedro.
- Q. Is that market known as the Municipal Fish Wharf? A. Yes.
 - Q. Or Municipal Pier? A. Yes.
 - Q. What time of the day did you arrive there?
- A. I don't recall. I think probably it might be around noon. I can't state.
- Q. What did you see when you arrived at the municipal fish pier in San Pedro? [85]
- A. I saw a number of men marching in column on the land side of the municipal market sheds, and later I saw a boat under way on the water side of the sheds.
- Mr. Margolis: I was waiting until the witness completed the answer. Is the answer completed?

The Witness: I beg your pardon?

Mr. Margolis: Is the answer completed? I didn't want to interrupt your answer.

The Witness: I was through then; yes.

Mr. Margolis: Your Honor please, I move to strike the answer on the ground that it is incompetent, irrelevant and immaterial, and not related to any issue in this case.

The Court: Overruled. [86]

* * *

- Q. (By Mr. Rubin): What were these men doing on the landward side, Mr. Cave?
 - A. Walking back and forth.

Mr. Margolis: I move to strike the answer on the same ground.

The Court: Motion denied.

Mr. Andersen: Also on the further ground, if I may add, that there is no showing that it is in any way related [87] to any of the defendants.

The Court: Motion denied.

Q. (By Mr. Rubin): What did you do at that time after you saw these men walking up and down?

A. I set my camera and took a picture of the men walking up and down on the land side of the sheds.

* * *

The Court: Do you have two photographs there?

Mr. Rubin: Yes, your Honor.

The Court: Hand them to the clerk—

* * *

The Court: O.K. We will get to that. Are you listing your other list of documents beginning with serial number 1? [88]

Mr. Rubin: Yes.

The Court: We will call these 1-A and 1-B, then. And if you will hand them to defense counsel before exhibiting them to the witness we may save more time.

* * *

The Court: Those are the negatives that you handed counsel?

Mr. Rubin: Those are the negatives. The record will show that the two documents designated 1-C and 1-D, for identification, are two envelopes,

(Testimony of Wayne B. Cave.) on the outside of which appears a news photograph, and inside the envelopes are contained one negative each in each envelope. [89]

- Q. (By Mr. Rubin): Mr. Cave, I show you what has been marked as Exhibit 1-C and 1-D, for identification. First taking 1-C for identification, would you look at that exhibit and tell the jury what it is?
- A. That is a negative of a picture I took on the 29th of May showing a scene on the water side of the wholesale fish markets with a number of purse seine boats. And in the foreground a motor boat or cabin cruiser with a sign on the front of it.
- Q. And on the face of the envelope designated 1-C, for identification, what appears?
 - A. A print of the same picture.
- Q. And is that one of the pictures that you took on the morning of May 29th? A. It is.
- Q. I now show you an envelope marked Government's Exhibit 1-D, for identification, and calling your attention to the negative film contained therein, I ask you to tell the jury what that negative is.
- A. That's another picture I shot May 29th on the land side of the wholesale fish markets showing men carrying placards. [90]
- Q. What appears on the envelope itself which is marked Government's Exhibit 1-D, for identification?
- A. That is a reprint of the negative that appears in a news print.

- Q. Is that a photograph that you took on May 29th of the fish pier or wharf? A. It is.
- Q. I call your attention to Government's Exhibit 1-A, for identification, and ask you to state what that purports to represent?
- A. That is an enlarged print of the Exhibit 1-D negative that I shot on May 29th from the land side of the municipal fish wharf.

The Court: That is a print of one of the negative that you have just identified?

The Witness: Yes, sir.

The Court: Which one?

The Witness: 1-D.

- Q. (By Mr. Rubin): And calling your attention to Government's Exhibit 1-B, for identification, I ask you to state what that purports to be.
- A. That is an enlarged print of the negative listed here as Exhibit 1-C, a picture I took on the seaward side of the municipal fish wharf on May 29th last year.

Mr. Rubin: At this time, if your Honor please, the [91] government offers in evidence as Government's Exhibit 1 the document heretofore marked Government's Exhibit 1-A, for identification.

Mr. Andersen: To which we object on the ground heretofore stated, your Honor. [92]

The Court: Do you offer the other one too?

Mr. Rubin: I offer, as Government's Exhibit No. 2, if your Honor please, the document heretofore marked Government's Exhibit 1-B for identification.

Mr. Andersen: Pardon me. Is your Honor changing the numbers?

The Court: Yes.

Mr. Andersen: 1-A becomes 1 and 1-B becomes 2?

The Court: That is right.

Mr. Andersen: And 1-C becomes 3 and 1-D becomes 4?

The Court: He hasn't offered those yet. [93]

Mr. Rubin: At this time the Government offers into evidence the documents heretofore marked Government's Exhibit 1-C for identification, and it may be stipulated that the printed material appearing on the bottom of the photograph appearing on the envelope of such document may be deemed not part of the exhibit, and in so far as the Government is concerned may be physically obliterated.

Mr. Andersen: We see no necessity of even offering them.

The Court: They have made no objection on the ground that there is no foundation laid for the photographs, and those are merely prints of those negatives. They can remain here and be marked for identification. [94]

* * *

The Court: I understand. I do not think the Government is trying to convict the defendants here of picketing. But there is no use of discussing a proposition such as this before the jury because I might make some remark on the law that might prejudice one side or the other. Let it be sufficient

to say at this time that I now overrule the objections and will admit the two photographs in evidence as Exhibits 1 and 2.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 1 and 2 respectively.)

Mr. Rubin: Let the record show that Government's Exhibits 1 and 2 are now being presented to the jury for their inspection.

(Exhibiting documents to jury.)

Mr. Rubin: Your witness.

Mr. Andersen: No questions. [97]

* * *

ARTHUR WEBSTER ROSS

called as a witness by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rubin:

- Q. What is your business or occupation, Mr. Ross?

 A. Fish merchant.
 - Q. How long have you been so engaged?
 - A. Since 1927.

- Q. Where is your place of business, Mr. Ross?
- A. On the Municipal Fish Wharf in San Pedro.
- Q. Have you been engaged in the business of fish merchant at that location ever since the period of time you mentioned?
 - A. Continuously since 1927.

- Q. What is the nature of your operation there?
- A. To buy and receive fish at the wharfside, that is, the seaside; to buy and receive fish from outside points in the state of California, and outside of the state of California.
- Q. Now when you refer to the seaside of the pier you are referring to the wharf at which the boats dock, is that correct?
 - A. That is correct.
- Q. Very well. Then for the purpose of this examination we will refer to the seaside where the boats dock as the wharf, and the landside as the dock.

Now from whom do you purchase fish on the wharf, that is, the seaward side?

- A. On the seaward side from fishermen. [99]
- Q. Approximately how many fishermen do you purchase fish from, if you know?
 - A. Approximately 40, 50 boats.
- Q. With whom do you negotiate for the purchase of fish from the fishermen?
- A. With the captain or owner, or the man in charge of the boat who might be able to speak English in the event that the captain does not speak English.
- Q. In other words, an interpreter for one of those?

 A. An interpreter for that captain.
- Q. I see. As to the fish that is brought in on the wharf, do you purchase or negotiate with anyone other than the boat owner or operator or the interpreter for him or them? A. No, sir.

- Q. Where are these negotiations consummated?
- A. Where the boat is tied up, generally, at the wharf.
 - Q. Now-
- A. Or the captain may come into our place of business.
- Q. Will you tell the jury in your own words generally what happens when a boat comes to the wharf and you have to decide whether or not you are going to buy fish from it, will you state generally the method of transaction from the time the boat appears at the wharf until the sale is consummated?

Mr. Garrett: Objected to as irrelevant.

The Court: Overruled. [100]

The Witness: First I have to know what fish we have on hand in our own place of business; second, I contemplate how many standing orders we have for that day's business; third, I figure what fish we may expect to ship without order. With that in mind we go out to the wharf and negotiate with the captain for whatever we think we may need.

Q. (By Mr. Rubin): And do you always buy fish from the captain or the boat that appears with fish?

A. Not necessarily.

Mr. Garrett: Same objection.

The Court: Same ruling.

Q. (By Mr. Rubin): Is there any record made of the amount of fish that you purchase from the captain or the boat owner?

- A. Yes, sir; there is an official record on the fish and game book in triplicate.
- Q. Do you own or operate any boats of your own out of San Pedro or elsewhere?
 - A. No, sir.
- Q. Do you employ anybody to operate any boats for you?

 A. No, sir.
 - Q. Do you lease any boats——
 - A. No, sir.
- Q. Do you lease any boats from whom you purchase fish? A. No, sir. [101]
- Q. Do you employ in your place of business any captain or any boat or any boat operator?
 - A. No, sir.
- Q. You have been in the business since 1927, I believe you said—is that correct?
 - A. That is correct.
- Q. I see. During the war years do you know whether or not there were OPA ceilings on the various prices of fish under the Emergency Price Control Act?

 A. Yes, sir.
- Q. What species of fish were covered by that Act in your knowledge as a fish purchaser? [102]

The Witness: Barracuda, halibut, sea bass; that is to say, California sea bass, Mexican sea bass, otherwise known as Mexican totouva; corbina, the tuna family, including blue fin tuna, yellow fin tuna, yellow tail, bonita, rock bass, corbina, king fish. That covers the majority of the local——

The Court: The majority? Not all of them?

The Witness: To my knowledge.

- Q. (By Mr. Rubin): Can you tell us to your knowledge what species were excluded from the OPA ceiling, if any?
- A. Mackerel, smelt, pompano, anchovies, sculpin, perch—black and blue and white. I think that would cover the bulk of them.
- Q. Mr. Ross, in your functioning there on the fish pier as a fish merchant, do you buy fish for canneries?

Mr. Garrett: Same objection, immaterial.

The Court: Overruled.

The Witness: No, sir. [103]

- Q. What type of market do you buy the fish for?
- A. For the fresh fish market.
- Q. Now, with respect to the species of fish that were just enumerated by you, are any of those species included in the type of fish that you purchase for the fresh fish market?

The Court: Which one? He enumerated two types of fish.

Mr. Rubin: All of them, if your Honor please.

The Court: Either included or excluded?

Mr. Rubin: That is correct. All the species of fish that you have enumerated, whether they were under the ceiling or not.

The Court: The question is whether or not they were purchased—used in the fresh fish market?

Mr. Rubin: Whether or not he purchases these species of fish for sale in the fresh fish market.

The Witness: All of those species I mentioned are for sale in the fresh fish market.

Q. (By Mr. Rubin): I see. Do you know whether or not prior to the lifting of all controls on food, whether or not [104] there was a suspension order as to fish in 1946?

Mr. Garrett: Objected to as incompetent.

The Court: Overruled.

Mr. Andersen: We join in the objection, your Honor.

The Witness: OPA regulations—

The Court: Go ahead.

The Witness: OPA regulations were suspended on May 20, 1946, for a period of 90 days.

- Q. (By Mr. Rubin): Were there any species of fish that were excluded from that suspension?
 - A. Yes, sir.
 - Q. What were those species?
 - A. The tuna family and the pilchard family.
- Q. On the 20th of May did you have a conversation with any of the defendants in this case?
 - A. Yes, sir.
 - Q. With what defendant or defendants?
 - A. On May 20th?
 - Q. On May 20th.
- A. On May 20th I had a conversation with Mr. Gilbert Zafran.

Mr. Rubin: May I ask the court to have Mr. Zafran stand?

(The defendant Zafran stood up.)

The Court: Is that Mr. Zafran?

The Witness: Yes. [105]

- Q. (By Mr. Rubin): Where did this conversation take place?
 - A. In my small office on the floor of the market.
 - Q. Who was present at that conversation?
 - A. My own secretary was there.
 - Q. What is your secretary's name?
 - A. Hobart Pitt.
 - Q. Was anyone else present?
- A. There were three or four other gentlemen along with Mr. Zafran.
- Q. Do you recognize any of them in the court room this morning?

The Court: Is this morning?

The Witness: I remember Mr. McKittrick.

Q. (By Mr. Rubin): Was Mr. McKittrick there ?

A. I believe Mr. McKittrick accompanied Mr. Zafran. [106]

Q. You don't recall anyone else, nor do you recognize anyone else who was in the court room.

Mr. Ross, will you state to the court and jury the conversation that occurred on May 20th in your office between yourself and these other gentlemen?

Mr. Garrett: Objected to on behalf of the defendant Sherman as incompetent, irrelevant and immaterial, no proper foundation laid as to the defendant Sherman.

Mr. Rubin: If your Honor please, that gives rise to this evidentiary question which we might as well settle at the outset of the case, because there will be——

The Court: Will this be extended? If it will, we should make it in the absence of the jury.

Mr. Rubin: I don't think so. I think it is a common principle of law. The suggestion that I was going to make is that this evidence go in, if it is admissible against any of [107] those who are charged here as co-conspirators, and then at the conclusion of the government's case should certain of the defendants not be tied into the conspiracy, of course, it would be subject to a motion to strike.

That is the most orderly procedure, otherwise you are going to have to enumerate and name each particular defendant as each bit of evidence goes in. That is the customary way, as I understand it, that these conspiracy trials are handled, and it is certainly the most expeditious. Mr. Garrett's client can certainly reserve the right as strike any and all of the testimony in the event he isn't tied into the offense charged. [108]

The Court: I think perhaps that would be true. Otherwise it would prolong the trial and probably create confusion which would not aid in a decision of the case.

Mr. Andersen: We join in the objection, your Honor.

The Court: Let me hear it.

Mr. Andersen: The Government in its opening

(Testimony of Arthur Webster Ross.) statement made a 30-minute oration about what they expected to prove and possibly the manner in which they wish to prove it, and it is true, as a general proposition, that in offering evidence in such a manner as this, that the order of proof is discretionary with the Court, and one need not start with A and uniformly go through B, C, D, etc. But if the Government wants to take advantage of a method of procedure they can start in at any point and build a crazy-quilt case and through that pretext, may it please the Court, put into evidence a great many matters that do not belong in evidence and should not be admitted into evidence.

Now if your Honor will look at the complaint, the indictment—

The Court: This is admissible against the defendants named, and the sole question is not whether it is being offered merely as a pretext and not admissible, but whether it is admissible at this time against the other defendants, subject to a motion to strike.

Mr. Andersen: Yes. That is part of the point I want to [109] make, may it please the Court.

There is no corpus delicti, and he is simply starting in at the letter L in the alphabet in order to introduce his proof. It has no relevance to the main pattern, it has no relevance to the indictment itself; it is simply some evidence that he has picked at random, may it please the Court, and to introduce it at this time rather than to introduce it in an orderly way.

I submit that if the United States Attorney with the evidence available would proceed in an orderly fashion, first establishing the corpus delicti and then continuing through, that that should be done. It is only when, due to some force of circumstance that prevents them from doing that, that the Court should permit him in the Court's discretion to vary from the usual method of proof.

I see no reason here why the District Attorney can't follow the normal method of proof, and so with this witness. He starts in to ask a question about a conversation on May 20th. The charge in the indictment before your Honor is that the parties entered into an agreement to regulate prices. That is the only charge that we have before your Honor.

The Court: I think if counsel in making their objections hereafter will merely state them and not argue them on both sides that it will be better.

Have you stated your grounds? [110]

Mr. Andersen: Yes, your Honor; both points.

The Court: The objections are overruled, subject to a motion to strike.

Mr. Garrett: Now, if your Honor please, in view of your Honor's ruling, may I ask that the jury be instructed that so far as defendants not named the testimony as to conversations with other defendants is not admissible against those defendants not named and that the jury should disregard it?

The Court: I have just made my ruling on the matter, that it is admissible in evidence and ad-

mitted into evidence generally. That means as against everybody, subject to a motion to strike. If it is not connected up with your client, I have not the slightest doubt but what you would make the motion to strike the evidence, in which event it will cast a greater burden on me, but the burden will be nevertheless upon me to determine whether or not it has been connected up with your client or any of the other defendants than those immediately named in the conversations.

Mr. Garrett: Would I be going too far if I asked the Court then to instruct the jury that evidence as to defendants not named is to be regarded as evidence as to them only when, as and if connected up?

The Court: I thought that I just covered that in my statement.

Mr. Garrett: I am sorry. [111]

Q. (By Mr. Rubin): Now, Mr. Ross, will you relate to the Court and jury the conversation that you had in your office on May 20th?

* * *

- A. Mr. Zafran handed me a contract.
- Q. Mr. Zafran handed you a contract. What was said at the time he handed you such contract?
 - A. I said that I could not sign that contract.

Q. (By Mr. Rubin): What was said by any person there at the time the contract was handed to you, Mr. Ross?

- A. I personally said that I could not sign the contract.
- Q. Now I show you what has been marked as Government's [112] Exhibit No. 3 for identification.

I ask you if you have ever seen that document before.

- A. This is the document. This was the document that was handed to me.
 - Q. By whom? A. By Mr. Zafran.

- Q. (By Mr. Rubin): What did you tell Mr. Zafran when he handed you this document?
 - A. That I could not sign that contract.
 - Q. Did you say anything else to him?
- A. For the reason that at one time we were given, my company, the American Fisheries Company, was given a cease [113] and desist order by the Federal Trades Commission in the matter of trying to fix prices.
 - Q. How long ago was that?
 - A. Between the years 1938 to about 1940.
- Q. What was said by anybody else at that conference after you made that statement?
- A. When I said that I could not sign that contract, Mr. Zafran said that ways and means would be found to compel us to sign that contract.
 - Q. Did he say anything else? A. No, sir.
 - Q. Did you sign the contract at that time?
 - A. I did not.
 - Q. Did you sign the contract at any other time?
 - A. I did not.

Mr. Rubin: At this time, if your Honor please, the Government offers Government's Exhibit No. 3 for identification into evidence as Government's exhibit next in order.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial, no foundation laid as to the defendant Sherman.

The Court: The objection is overruled, subject to a motion to strike. It will be admitted into evidence as Government's Exhibit No. 3.

(The document referred to was received in evidence and marked Government's Exhibit No. 3.) [114]

The Court: Let me ask this witness a question. Nobody else said anything? Zafran didn't say anything when he came in, or this other fellow?

The Witness: Oh, just general conversation.

Q. (By Mr. Rubin): What was that general conversation?

The Court: He asked you-

The Witness: I cannot recall anything further outside of the fact that he wanted us to sign.

The Court: You mean Zafran just came in and handed you that and didn't say anything and you said, "Well, I won't sign it"?

The Witness: Well, the only conversation was—I know Mr. Zafran personally.

The Court: You have known him before?

The Witness: I have known him for years, and talked to him in a very friendly manner. We are friends today.

The Court: Yes?

The Witness: And during that conversation he said——

The Court: The substance of the conversation. The Witness: The substance of the conversation was that he was presenting a contract for us to sign.

Mr. Rubin: At this time I would like to read to the ladies and gentlemen of the jury Government's Exhibit No. 3, which is headed "Southern California Market Fishermen's Master Agreement," and reads as follows:

"This Agreement made and entered into this

- Q. (By Mr. Rubin): Now, Mr. Ross, was there any further conversation that you can recall that you had with Mr. Zafran and the other gentlemen who were present on May 20th other than that which you have heretofore related to the court and the jury?

 A. No, sir.
- Q. Now subsequent to that date did you have a conversation with any other defendant who is now in the court room?

 A. Yes, sir.
 - Q. Who was that? A. Mr. Sawyer.

Mr. Rubin: Mr. Sawyer, would you mind standing?

- Q. Is this the gentleman whom I am now indicating? A. Yes, sir.
 - Q. When was that conversation?
 - A. Within three days after the 20th.
 - Q. Where did that conversation occur? [134]
 - A. In the small office in my plant.

- Q. Who else was present there at that time?
- A. Mr. Pitt.
- Q. Your secretary?
- A. My secretary; yes, sir.
- Q. Was there anyone else present?
- A. Not to my knowledge.
- Q. Do you know what brought Mr. Sawyer to your office that morning?

Mr. Garrett: Objected to as calling for a conclusion of the witness.

Mr. Rubin: I am asking him whether or not he knows.

Mr. Andersen: It is still a conclusion, your Honor.

The Court: Overruled.

The Witness: We were negotiating at the time for the purchase of fish from Mr. Sawyer.

- Q. (By Mr. Rubin): What was the conversation had at that time other than the negotiation for the fish?
 - A. He exhibited to me a letter from the union.
 - Q. By "union" do you mean this association?
 - A. By the association of boat owners.

- Q. What were his words, as nearly as you can recall?
- A. That he received a letter from the association of fishermen stating a strike would be called in the event that [136] we did not sign a contract of May 20 as to fish prices.

Q. I show you Government's Exhibit 4 for identification and ask you if you have ever seen that document before.

A. This is the document left in my office by Mr. Sawyer.

Q. At that time? A. At that time.

Mr. Rubin: At this time, if your Honor please, the government offers into evidence as its next exhibit in order the document heretofore marked Government's Exhibit No. 4 for identification.

The Court: This will be received, subject to the motions to strike as heretofore indicated with relation to the other exhibits, and marked in evidence as No. 4.

(The document referred to was received in evidence and marked as Government's Exhibit No. 4.)

Mr. Andersen: What is the date of that? The Court: May 17th.

Mr. Rubin: At this time I would like to read Government's Exhibit No. 4 to the ladies and gentlemen of the jury.

It is mimeographed on one sheet, at the top of which appears, in capital letters, "International Fishermen & Allied Workers of America, Local 36, Berth 72, San Pedro, California, May 17, 1946," and reads as follows: [137]

* * *

Mr. Andersen: Part of our objection to that is, your Honor, there is no foundation shown, may it

please the court, as well as the corpus delicti and the other objections that are made. That is understood, I assume?

The Court: Yes; the objections are overruled. The ruling will stand, subject to that motion.

Q. (By Mr. Rubin): Now, Mr. Ross, did you—withdraw that.

Mr. Rubin: Will you mark this, please, Exhibit 5?

(The document referred to was marked Government's Exhibit 5, for identification.)

Mr. Garrett: I observe that the witness has been testifying from notes, if your Honor please. I just noticed this for the first time.

The Court: Let me see the document.

Mr. Garrett: May I hand it to the court?

Q. (By Mr. Rubin): Are those notes in your handwriting, Mr. Ross?

A. Yes, sir.

Q. Did you make them yourself preliminary to coming to court?

A. They were made by myself at the time.

The Court: At the time of the events?

The Witness: Yes, sir.

The Court: Do you need these to refresh your recollection? [140]

The Witness: Only as to dates.

The Court: Only as to dates?

The Witness: That is correct.

Mr. Garrett: I ask that they be marked.

The Court: It may be marked for identification Defendant Sherman's Exhibit A.

(The document referred to was marked Defendant Sherman's Exhibit A, for identification.)

* * *

- Q. (By Mr. Rubin): Mr. Ross, I show you Government's Exhibit No. 5, for identification, and ask you if you have ever seen that document before.
 - A. Yes, sir.
 - Q. Where did you see that document before?
 - A. It was delivered to me.
 - Q. On what date?
 - A. On May 28, 1946, 10:20 a.m.
 - Q. How do you know that is the date and time?
 - A. My handwriting is on it.
- Q. And by whom was that document delivered to you? [141] A. By Mr. Zafran.
 - Q. Where? A. At my office.
- Q. Was anyone else present, to your recollection, at the time this document was delivered to you by Mr. Zafran?

 A. I do not recollect.

Mr. Rubin: At this time, if your Honor please, the government desires to offer into evidence as its exhibit next in order the document heretofore marked Exhibit No. 5, for identification.

Mr. Andersen: Same objection.

Mr. Garrett: Same objection.

The Court: Same ruling. Admitted in evidence as No. 5.

(The document referred to, heretofore marked Government's Exhibit 5, was received in evidence.)

Mr. Rubin: At this time we desire to read to the ladies and gentlemen of the jury Government's Exhibit No. 5, which is a document, carbon copy of typewriting, dated May 27, 1946, and addressed, in capital letters, to San Pedro Fish Dealers:

"Dear Sir: * * * [142]

Q. (By Mr. Rubin): Did you report to your place of business on May 29th, Mr. Ross?

A: Yes, sir.

Q. What time did you arrive there?

A. Between 8:00 and 9:00 o'clock.

* * *

Q. (By Mr. Rubin): Did you notice anything unusual at that time?

Mr. Andersen: To which we will object as calling for [143] his conclusion, entirely speculative. He may have seen a turtle walking in his office door.

The Court: Maybe he did. If it had some relation to this case it would be admissible. The objection is overruled.

- Q. (By Mr. Rubin): Please answer that yes or no. Did you notice anything unusual on that occasion? A. Yes, sir.
- Q. What did you see at the fish pier on the morning of May 29th?
- A. On the landward side a group of around 10 or 12 men parading with signs on their shoulders in front of our markets.
- Q. What else did you see? What were these men doing?

- A. Parading up and down in front of the market with these signs.
- Q. What did the signs have on them, if you recall?
- A. "No fish, no contract. We want stabilized prices. We want a living wage." [144]
- Q. (By Mr. Rubin): Now, on the seaward side did you notice anything unusual?
- A. There was a boat sailing back and forth on the seaward side in front of the fish boats tied to the wharf, which we found later to be a picket boat, so-called picket boat with a sign across it also: "No fish, no contract."
- Q. Mr. Ross, I show you Government's No. 2 and ask you if that is the boat that you are now referring to.
- A. I can't positively recognize the boat, unless I saw the name on it.
 - Q. What was the name of the boat?
 - A. The name of the boat was the Marauder.
 - Q. Do you know who owns the Marauder?
 - A. I do not.
- Q. I show you Government's Exhibit No. 1, and ask you if you recognize that as the line which paraded up and down before the fish pier.
 - A. Yes, sir. [145]
- Q. Do you recognize any persons in that picture?

 A. I recognize the first man.
 - Q. What is his name? A. Smith.
 - Q. Do you know his first name or initial?

A. I believe it was "W" otherwise known as Bunny. The second man I don't know. The third man is Mr. Sawyer.

Q. Mr. Sawyer who stood up a moment ago in the court room?

A. Correct. The fourth man I believe I recognize as being Chris Kennison.

The Court: Is he present?

The Witness: Yes, I believe he is the second man.

Mr. Rubin: Will you stand up, Mr. Kennison?
(The defendant Kennison stood up.)

The Witness: That is right, that is Mr. Kennison.

Mr. Rubin: Thank you, Mr. Kennison.

The Witness: That is all I recognize.

Q. (By Mr. Rubin): Do you know whether or not the persons whom you have so indicated are members of Local 36?

A. I do not.

Q. Were there any boats tied up to the wharf at the time this other boat was patroling?

A. Yes, sir.

Q. Do you know whether or not there were any boats there [146] that were owned or operated by persons who were not members of Local 36?

A. Yes, sir.

Q. And what boats were those and who were the owners or operators, if you know?

A. One of them would be the President.

- Q. And who is the owner or operator of the President?
- A. The owner and operator would be Frank Puglese. The Jenny.
- Q. Who was the owner or operator of the Jenny? A. V. Pizzo. The Sport.
 - Q. And who owns or operates that?
 - A. Joe Stagnero.
 - Q. Joe Stagnero owns or operates that boat?
- A. Yes, sir. The Stella Maris. Batista Falcone.
 - Q. Do you know Mr. Falcone's first name?
 - A. Batista Falcone.
- Q. Did any of those boats or did any boat leave the San Pedro fish wharf on May 29th?
- A. I believe that the President, one of the small boats, did leave that morning. [147]
- Q. (By Mr. Rubin): Did any trucks arrive at the wharf that morning, to your knowledge?
 - A. Yes, sir.
- Q. Let me ask you this, Mr. Ross: You purchased fish, you testified, I believe, from the seaward side, from the boats, is that correct?
 - A. Yes, sir.
- Q. Do you obtain fish for processing through your place of business from any other source?
- A. From outside ports, other fishing ports in the State of California.
- Q. And what are some of these other ports in California that you purchase fish from?

- A. San Diego, Santa Barbara, San Francisco, Eureka.
- Q. And you testified, I believe, before the recess that you purchased fish from out of the State, too?
 - A. Yes, sir.
- Q. How was that fish delivered to your place of business at San Pedro?

The Court: Which? The out of State or from the other ports?

Mr. Rubin: Both, if your Honor please.

- A. Either by Railway Express Agency or by refrigerated fast freight.
- Q. (By Mr. Rubin): And the fish from the States of Oregon and Washington, specifically, are delivered to your place of business through what means?

 A. By either of those two agencies.
- Q. Now, in addition to the fish which you purchased from the seaward side and the fish that you purchased from ports located in other points within or without the State of California, do you have and carry an inventory at your place of business? A. Yes, sir.
 - Q. What is the nature of that inventory?
 - A. It consists of fresh and frozen fish.
- Q. I see. Now, on the day of the strike did you have—withdraw that. The day you found this group of men parading up and down the fish wharf, did you have any conversation with any of the defendants in this case? [150]
 - A. Yes, sir.
 - Q. With whom?

- A. With Mr. Sawyer particularly.
- Q. And when was that conversation?
- A. As he approached the wharf.
- Q. Who was present there? Do you know who was present when you talked to Mr. Sawyer that day?
- A. Merely Mr. Sawyer. It was a conversation, between the two of us.
 - Q. Mr. Sawyer and yourself? A. Yes, sir.
 - Q. Was anybody else present? A. No, sir.
 - Q. What was said at that time?
- A. I asked him what was going on? He said, "The strike is in force."
 - Q. What else was said, if anything?
- A. On that particular day? Nothing, except pass the time of day.
- Q. Apart from this one boat, the President, did any other boats leave the port that day?
 - A. Not to my knowledge.
 - Q. Did any boats bring fish in that day?
- A. No, sir, unless the President brought in a few fish.
- Q. But other than that one boat you don't know whether [151] any other fish was landed in San Pedro?

 A. That is correct.
- Q. Mr. Ross, during the period of time when the so-called pickets were parading in front of the places of business of the fish dealers at San Pedro, was any fish of any sort landed by anybody on the seaward side of that fish wharf?
 - A. No, sir.

- Q. Day or night?
- A. Not to my knowledge.
- Q. What are your usual hours of business?
- A. From 7:00 o'clock in the morning to 7:00 o'clock at night.
- Q. And are you there generally during that period of time? A. No, sir.
- Q. (By Mr. Rubin): I believe you testified that certain trucks did unload fish on the landward side, is that correct?

The Court: You mean on that day, or customarily?

Mr. Rubin: On that day, yes, your Honor.

- Q. (By Mr. Rubin): I will ask you, did any trucks unload fish on the dock side, the land side on that day, to your knowledge? [152]
- A. I don't know about the trucks, I am not sure about it.
- Q. Was any fish landed from any source on the dock side that day?
 - A. By the Railway Express Agency.
- Q. Did they unload fish at your place of business?

 A. I do not know.

* * *

Q. (By Mr. Rubin): For how many days did the Railway Express Agency unload fish on the dock side of the fish pier during May, to your knowledge?

A. Two days; Friday and Saturday. If I could have my notes, I will give you the exact dates, if counsel will be so kind as to hand them back to me.

(The document was handed to the witness.)

The Witness: Thank you. Thursday, the 30th of May, was a holiday, the place was closed. The 31st of May and the 1st of June we were allowed to operate.

Mr. Anderson: I move that be stricken as calling for the conclusion and opinion of the witness, may it please the court, what he may or may not have been allowed to do by anybody.

Mr. Garrett: Objected to as not responsive.

Mr. Andersen: Also as not responsive. [153]

The Court: The word "allowed" may be stricken. Let's read the question again. I believe he said during the month of May.

Mr. Rubin: The month of May.

The Court: The whole month?

Mr. Rubin: Commencing with the 27th, and I should include——

The Court: You didn't say that.

Mr. Rubin: I should have said during the period of time that the pickets were walking up and down outside the pier.

The Court: Well, we don't know how long they were walking up and down outside the pier.

Mr. Rubin: All irght.

Q. (By Mr. Rubin): The Railway Express, as I understand your testimony, delivered fish for two days after the pickets appeared, is that correct?

A. That is correct.

The Court: What dates were those?

The Witness: Those dates were May 31st and June 1st.

- Q. When—
- A. The strike was effective on May 29th, the 30th being a holiday.
- Q. When were the pickets withdrawn, Mr. Ross, to your knowledge? A. By July 1st. [154]
- Q. Now, then, from May 29th to July 1st, apart from those two days, did the Railway Express Agency unload any fish on the wharf of the fish pier at San Pedro?

Mr. Garrett: One moment, please. Objected to as incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues in this case.

* * *

Mr. Andersen: The objection is that this matter relating to picketing is incompetent, irrelevant, has nothing to do with the matter charged in the indictment, and we would [155] like to argue the point, may it please the court. [156]

* * *

The Court: The objection will be overruled. The objection made both by Mr. Garrett and by Mr. Andersen will be overruled. [157]

Mr. Garrett: May I state, if your Honor please, my objection is not based upon the general proposition but what I believe to be the lack of casual connection shown by the foundation.

The Court: I think I understand it.

Those objections are both overruled.

Would counsel care to—well, I was going to suggest that an objection made by any defense counsel would be made on behalf of all defendants unless it was specifically disclaimed.

Mr. Andersen: That is quite agreeable, your Honor.

Mr. Garrett: That is agreeable.

The Court: That will be the order of the court then. [158]

By Mr. Rubin:

Q. Between May 29, 1946, and July 1, 1946, and with the exception of May 29 and May 30, Mr. Ross, was any fish unloaded at the San Pedro fish pier by the American Railway Express Agency?

Mr. Andersen: To which we will object on the ground it assumes something not in evidence.

Mr. Garrett: That is our objection.

The Court: He testified that the fish was not delivered on May 30th because it was a holiday but it was delivered on June 1st.

Mr. Rubin: I am now asking him whether at any time between that date and July 1st, 1946, any fish was delivered.

The Court: The same objection, I suppose, that you heretofore stated?

Mr. Garrett: Same objection, no proper foundation for it.

The Court: Objection overruled. [160]

- A. My answer to you is no, sir, there were no fish delivered.
- Q. Now, in so far as your business is concerned, do you customarily order fish for delivery from points other than San Pedro to be delivered on your dock by truck companies or the Railway Express Agency?

 A. Yes, sir. [161]

Q. Can you tell the court and jury whether or not in your business, during the month of June, you make such purchases?

* * *

The Witness: Yes, sir.

The Court: He has answered.

By Mr. Rubin:

Q. How far in advance of such deliveries are such orders placed generally in your business?

Three to four days.

The Witness: Three to

By Mr. Rubin:

- Q. Three to four days prior to when?
- A. To making the purchase.
- Q. Now prior to May 27, 1946, had you ordered such fresh fish from points other than San Pedro to be delivered to your place of business? [162]

The Witness: Yes, sir.

* * *

Q. (By Mr. Rubin): From what points, Mr. Ross, prior to May 27, 1946, do you order such fresh fish to be delivered to the dockside of your place of business?

A. From San Diego, Santa Barbara, San Francisco, Eureka, Astoria, Bellingham, Seattle, Coos Bay and Anacortes. [163]

* * *

- Q. (By Mr. Rubin): Mr. Ross, with respect to the fish which you ordered prior to May 27th, several days prior to May 27th, 1946, had you had any such conversation with any of the defendants in this case.

 A. Yes, sir.
 - Q. With whom? A. With Mr. Zafran.
 - Q. When was that conversation?
 - A. On the day of the strike.
 - Q. Who was present?
- A. I talked to him personally. I believe we were together.
 - Q. Was anybody else there?
 - A. Not to my knowledge.

* * *

- Q. (By Mr. Rubin): Where did the conversation occur, Mr. Ross?
 - A. On the wharf?
 - Q. Now what was said?

Mr. Andersen: We urge the same objection as heretofore made, may it please the court. [164]

The Court: Overruled.

The Witness: I asked Mr. Zafran if we could get rid or could sell the fish that we had on hand or was coming in on those two days, and he gave us, kindly gave us, permission to sell what fresh fish we had on hand.

Q. What did Mr. Zafran say to you? Can you recall his words or the substance of what he said to you? Mr. [165] Zafran said to you as follows. Now what follows, if anything?

A. You can sell and deliver through the Railway Express or whatever means we will have to get rid of it, by truck, during May 31, which was Friday, and June 1st, which was a Saturday. That gave us a chance to clean up all fresh fish so that we would not have any loss.

Q. Was any conversation had between yourself and Mr. Zafran as to any other fish that would come in on either the landward or the seaward side?

A. After that we could not ship.

* * *

- Q. What were the words, not the identical words because [166] probably you may not be able to remember them, but what was the substance of the words that Mr. Zafran used to you that morning, if anything, with respect to additional fish coming in or going out?
- A. No fish would be permitted to come in on the seaward side or on the land side after Saturday, June 1st.
- Q. All right. Did you say anything to him after he said that to you?

Mr. Andersen: Same objection runs to this line of testimony, your Honor.

The Court: Overruled.

The Witness: I said, we would try to do what business we could.

Los Angeles, California, March 19, 1947 10 A.M.

Q. Mr. Ross, last evening before the adjournment we were discussing the delivery to your place of business of [177] fresh fish from other points within and without the state of California by the American Railway Express. Will you describe to the Court and jury, please, the usual and customary procedure of such shipments prior to May 27, 1946, immediately prior to that period? [178]

The Witness: Fish is received by us from points in California and outside of California either by Railway Express Agency or by refrigerated trucks who bring same to the wharf side, that is, the landward side of our place of business, and deliver same into our place of business.

- Q. (By Mr. Rubin): Now that is both by the Railway Express and by motor freight?
 - A. Correct.

Q. Now, after May 27 and to and including the 1st of July, the date which you testified I believe that this line [179] was withdrawn, was there any change of the procedure, the mechanics of delivering fish to your place of business on the fish pier by the American Railway Express?

A. Yes, sir.

Q. The question, Mr. Ross, was, what was the change of procedure with respect to the method of delivery or pickup by the American Railway Express during the month of June.

Mr. Garrett: Objected to as leading and assumes that there was a change in procedure; assuming facts not in evidence. [180]

Mr. Rubin: I just asked him if there was a change after that period.

The Court: Overruled.

The Witness: There was a change.

Q. (By Mr. Rubin): What was that change with respect to the American Railway Express alone?

* * *

The Witness: During the first few days after July 1st, fish was delivered to the Los Angeles depot.

- Q. (By Mr. Rubin): The Los Angeles depot of what?
 - A. Of the Railway Express Agency.
 - Q. Was that your fish?
 - A. That was my fish.
- Q. When had you ordered that fish that had been delivered to the Los Angeles depot a few days after the picket line was placed around there?
 - A. Three to four days in advance.

Mr. Garrett: Same objection. [181]

The Court: Same ruling.

I do not know what you mean by the Los Angeles depot. You said fish was delivered to the Los Angeles depot.

The Witness: Los Angeles depot of the Railway Express Agency.

The Court: Where is the Los Angeles depot of the Railway Express Agency?

The Witness: In the joint station, in the central station of all railroads.

The Court: Central station?

The Witness: Of all railroads in Los Angeles.

The Court: You mean down here at the Union Terminal?

The Witness: Union Terminal.

The Court: In Los Angeles?

The Witness: In Los Angeles.

Mr. Garrett: Your Honor please, may I have a continuing objection on the basis stated to this line of questioning?

The Court: The record will so note without repeating an objection to each question, counsel's objection will stand, and the same ruling.

- Q. (By Mr. Rubin): Was that fish subsequently delivered to your place of business at the San Pedro pier?

 A. No, sir.
 - Q. Was it delivered there by any person? [182]
 - A. It was brought in by ourselves.
 - Q. Where did you obtain the fish?
- A. At the same depot of the Railway Express Agency.
- Q. What transportation did you use to deliver the fish from the depot?

 A. Our own truck.
 - Q. Who drove the truck? A. Mr. Pitt.

- Q. What capacity does Mr. Pitt have in your organization? A. Secretary.
- Q. Do you employ other drivers in your place of business? A. No, sir.
 - Q. Was Mr. Pitt your customary driver?

The Witness: No, sir.

- Q. (By Mr. Rubin): Who was your customary driver?
 - A. We have no customary driver.
- Q. Was fish transported to the Los Angeles depot from [183] your place of business after the first two days of the picket line?
 - A. Yes, sir.
 - Q. And by whom was that fish transported?
 - A. By Mr. Pitt.
- Q. For how many days, approximately, was fish which you purchased from points outside of Los Angeles, both within and without the state of California, delivered by the American Railway Express to their Los Angeles depot?
 - A. Approximately three or four days.
- Q. Was there a change in the delivery procedure after that period of time? A. Yes, sir.
 - Q. What was that change?
- A. The fish delivery was made to the depot of the Railway Express Agency at San Pedro.
- Q. By what means was the fish transported from the depot in San Pedro to your place of business?
 - A. By our own truck.

- Q. And was fish delivered to the Railway Express in San Pedro from your place of business?
 - A. Yes, sir.
 - Q. Through what means?
 - A. By our own truck.
- Q. At any time during the period between June 1st and [184] July 1st was any fish delivered directly to your place of business at the fish wharf by the American Railway Express?
 - A. No, sir.
- Q. Was any fish picked up at your place of business by the American Railway Express during that period?

 A. No, sir.
- Q. Now, with respect to fish received by motor freight concerns, I believe you said, and I believe also you testified that they came from points within the state and in northern states of Washington and Oregon, what was your customary and usual procedure in your place of business in the receipt and pick-up of fish transported by motor freight companies?
- A. The customary procedure was to receive it at the landward side of the wharf and placed in our place of business.
- Q. Mr. Ross, calling your attention to Government's Exhibit No. 1, I ask you if that is a picture of the pier upon which your place of business is located.

 A. Yes, sir.
- Q. How many fish buyers are located on that pier?

 A. During that period, twelve.

Q. Are there any fish buyers located at any other point besides that pier in San Pedro, to your knowledge? A. Not to my knowledge. [185]

The Court: In other words, that is the fish buying center for San Pedro?

The Witness: Correct.

* * *

- Q. After June 1, 1946, was there any change of procedure [186] at your place of business in shipping or receiving fresh fish on the landward side by transportation other than the Railway Express, namely, the motor trucks that you referred to?
- A. The refrigerated trucks delivered our fish to the Union Ice Company at Wilmington.
- Q. At whose instructions was the fish delivered to the Union Ice Company?
 - A. By our instructions.
- Q. When did you give the motor truck company that instruction? A. After June 1st.

The Court: After June 1st?

The Witness: On June 1st, 1946.

- Q. (By Mr. Rubin): Was that fish thereafter delivered to your place of business on the fish pier?
 - A. Yes, sir.
 - Q. By whom? A. By our own truck.
 - Q. Driven by whom?
 - A. By Mr. Pitt.
- Q. Now with respect to fish shipped out of your place of business, was there any fish shipped from

(Testimony of Arthur Webster Ross.) your place of business by motor truck other than the Railway Express during the month of June, 1946?

A. No, sir.

- Q. Was any fish shipped out of your place of business by any means of transportation during June, 1946?

 A. Yes, sir.
 - Q. By what transportation?
 - A. By our own truck.
 - Q. And to what point was that fish transported?
 - A. To the depot in San Pedro.
 - Q. What depot?
 - A. Of the Railway Express Agency. [188]
- Q. As to shipments that were thereafter to be carried by the Railway Express Agency?
 - A. Yes, sir.
- Q. How about shipments that were to be carried by truck other than the Railway Express?
 - A. We did not have any.
- Q. You did not have any. So that during June, 1946, no shipments emanated from your place of business by any transportation other than the Railway Express Agency, and then from its depot in San Pedro.

 A. Yes, sir.

* * *

Q. (By Mr. Rubin): Did you make any efforts to have the American Express Agency pick up and deliver—pick up from and deliver to your place of business fish received from and destined to other points within and without the State during June, 1946?

A. Yes, sir. [189]

Mr. Andersen: I think we should object to that on the ground heretofore stated, may it please the court.

The Court: Objection overruled.

Q. (By Mr. Rubin): And what efforts did you make, Mr. Ross?

A. We got in touch with Mr. Ripley.

Q. Who is Mr. Ripley?

A. Superintendent of the Railway Express Agency in Los Angeles, and asked him to deliver and to accept fish at our wharf for shipment to outside points in the State of California, and to outside points outside of the State of California.

Mr. Andersen: We will object to all of this as hearsay as to these defendants, may it please the court.

Mr. Garrett: Same objection.

Mr. Andersen: I move the answer be stricken.

Mr. Garrett: In addition to the standing objection.

Mr. Rubin: If your Honor please, if I might be heard for a moment. This testimony goes to the nature of the restraint against interstate commerce.

The Court: I understand that. I am just pondering their objection.

Mr. Andersen: If I might add, may it please the court, the charging allegation in the indictment is the agreement among the fishermen themselves as to the price. That is the [190] gravamen of the action here. [191]

* * *

The Court: The portion of the answer beginning with "and asked him to deliver" may be stricken. Otherwise the motion to strike is denied.

Q. (By Mr. Rubin): Now, Mr. Ross, after making such efforts did, during the month of June, 1946, the American Railway Express Company deliver to or pick up from your fish pier any fish destined to any point?

* * *

- A. No, sir.
- Q. (By Mr. Rubin): Mr. Ross, I show you what has been marked as Government's Exhibit No. 6, for identification, and ask you what that purports to be. [192]
- A. These figures represent the fish landed at the wharf in San Pedro from July, 1945, to July 16, 1946. [193]
- Q. (By Mr. Rubin): Mr. Ross, were you requested by the government attorneys to prepare statistics from your records as to fish purchased by you and shipped by you at your place of business?
 - A. Yes, sir.
- Q. And were you requested to include in those statistics fish both landed at the wharf at your place of business and fish received by you on the landward side?

 A. Yes, sir.
- Q. And fish shipped by you on the landward side, was that to be included also?
 - A. Yes, sir.

- Q. And did you prepare such statistics?
- A. I had my bookkeeper prepare those statistics.
- Q. And were those statistics prepared under your immediate supervision and control?
 - A. Yes, sir.
 - Q. What is the name of your bookkeeper?
 - A. Mrs. Pitt. [194]

* * *

- Q. (By Mr. Rubin): And is Government's Exhibit No. 6, for identification, a compilation of the statistics so requested of you?

 A. Yes, sir.
- Q. Calling your attention to the first page of— The Court: Statistics of what? Fish shipped. Fish shipped out by you, fish shipped in by you?

The Witness: Yes.

The Court: Both?

The Witness: Yes.

The Court: What period was the request here to make——

The Witness: From July, 1945, to July, 1946.

The Court: All right.

The Witness: Including poundage and dollars and cents.

The Court: And source of origin?

The Witness: Yes, sir.

The Court: Or destination?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Rubin): What classification as to destination points was made in this compilation, Mr. Ross?

A. Points within the State of California, and points without the State of California. [195]

* * *

As to fish purchased both within the State at your wharf side and received on the dock side, what does the dollar figure represent?

A. Cost.

- Q. And as to fish shipped from your place of business to points within and without the State of California what does the dollar figure represent?
 - A. Selling price.
 - Q. That is your selling price? A. Yes, sir.

Mr. Rubin: Withdraw the question at this time. The government offers Government's Exhibit No. 6, for identification, into evidence as the Government's exhibit next in order.

Mr. Garrett: If your Honor please, may I have the witness on voir dire?

The Court: All right.

Voir Dire Examination

By Mr. Garrett:

Q. Mr. Ross, do you keep books?

A. No, sir.

Q. (By Mr. Garrett): Does Mrs. Pitt keep books?

A. Yes, sir.

Q. She is your bookkeeper? A. Yes, sir.

Q. Employed by the American Fisheries Company, Incorporated? A. Yes, sir. [197]

- Q. And the records that you have here are records—No. 6, for identification, is that a document which purports to be information relating to business of the American Fisheries Company, Incorporated?

 A. Yes, sir.
 - Q. And you say that was prepared by Mrs. Pitt?
 - A. Yes, sir.
 - Q. Do you know what she prepared it from?
 - A. From our books.
 - Q. What?
 - A. From the company's books of record.
 - Q. Where are those books of record kept?
- A. In my place of business in the office on the Municipal Fish Wharf.
 - Q. Are they there now? A. Yes, sir.

Mr. Garrett: No further questions.

Objected to as not the best evidence.

Mr. Andersen: That is part of the basis of our objection, also, as not being the best evidence. Possibly the books should be brought into court in order that we may have access to them in order to check these figures.

The Court: Do you object on the basis that it is not the best evidence?

Mr. Andersen: Yes, your Honor. [198]

Mr. Rubin: Your Honor please, these statistics were prepared under the immediate supervision and control of the witness on the stand, who is the head of this organization. The compilation certainly can be testified to and admitted into evidence upon in-

formation of his own organization as to all of the fish purchased and received there at San Pedro.

The Court: I think, counsel, that under Section 695 of Title 28 it was intended that compilations such as this should be admitted into evidence, but at the same time I think that the documents from which these were made should be in court.

Mr. Andersen: That is right.

The Court: So that if counsel for the other side desire to test the credibility of these figures by recourse to that document, they may do so. If, on your assurance that the documents will be produced, I will order—what books did she take these from? Do you have one ledger?

The Witness: No, we have accounts receivable, accounts payable; we have a complete set of books.

The Court: Do you finally reduce it down to one book?

The Witness: No, sir.

Mr. Rubin: From what source were these figures obtained?

The Witness: It consists of many receiving records, sales records—it would be a tremendous task to bring those books in here, and they are in current use. [199]

Mr. Andersen: We will of course waive our objection if the books and records are produced for our inspection.

Mr. Garrett: I won't waive any objection, if your Honor please. I want to see those books.

The Court: You say this is in 1946?

The Witness: From 1945 to 1946.

The Court: I think the books ought to be produced.

Mr. Rubin: Mr. Ross, if the Government asks and cooperates in the production of those books will you see that those books are produced?

The Court: I do not think that they ought to be produced or kept here for any length of time other than for giving counsel recourse to them on the cross-examination of this witness.

Mr. Andersen: That is right.

The Court: In other words, there is no necessity to bring them here and leave them here until this case is finally finished.

Mr. Rubin: I think, if your Honor please, I can arrange to have the books here, and I will ask Mr. Ross if he will give us his assurance of that cooperation.

The Witness: Yes, sir.

The Court: Very well. On that assurance the document will be admitted at this time. It will be stricken if the books are not produced. [200]

The Clerk: No. 6.

(The document referred to was received in evidence and marked Government's Exhibit No. 6.)

Mr. Garrett: If your Honor please, may we have the production of the books before the matter in that document is shown to the jury so that the basis of the compilation may be ascertained? The

(Testimony of Arthur Webster Ross.) damage done by a purely hearsay document might be hard to remedy, particularly if the proper books

Mr. Rubin: If your Honor please, the only purpose of producing the books——

are not produced hereafter.

The Court: The witness has testified that these were compiled by the regular bookkeeper that he had in the regular course of his business and I think it is a pretty fair inference and assumption that he does business on the basis of those same books, and the books will be produced so that you can cross-examine him, and if the value of his testimony is destroyed by your cross-examination, then it will have no weight with the jury. It is a question of weight and not of admissibility.

Direct Examination (Continued)

By Mr. Rubin:

- Q. Mr. Ross, are the books and records from which this compilation is obtained, made and kept in the usual course of business at your place of business?

 A. Yes, sir.
- Q. Now calling your attention to that portion of page 1 of Government's Exhibit No. 6 in evidence, headed "Fish Landed at the Wharf" will you look at that portion and state [202] to the jury the number of pounds of fish which were landed at your place of business at the wharf at San Pedro in the calendar year preceding, immediately preceding, July 16, 1946?

 A. 392,158.

- Q. Is that pounds? A. Pounds.
- Q. Having a dollar value of cost to yourself?
- A. \$43,134.97.
- Q. Calling your attention to that portion of the same exhibit headed "Purchases within California" I will ask you to give the same figure in pounds and dollar value.
 - A. 358,810 pounds; value in dollars, \$78,649.02.
- Q. Calling your attention to that portion entitled "Purchases from out of state" for the same period, I would ask you to give the two figures representative of the poundage and dollar value of those purchases.
 - A. 56,039 pounds; in dollars, \$12,838.13.

The Court: For when?

The Witness: For the same period of time; July 1945 through July 16, 1946.

- Q. (By Mr. Rubin): Calling your attention to the second page of Government's Exhibit No. 6, and specifically with reference to that portion captioned "Sales Within California" would you give us the amount of sales in pounds and dollars to points [203] within the state of California?
- A. 663,813 pounds; dollar and cents value, \$149,008.24.
- Q. Calling to your attention that portion captioned "Sales out of State" for the same period would you give us the same two figures?
 - A. Poundage, 79,284 pounds; value, \$18,036.68.
- Q. Now with respect to the fish landed at the wharf—I will withdraw that question.

Mr. Ross, are there seasonal periods in your business where fish purchases are heavier than other periods during the year?

A. Yes, sir.

- Q. What season of the year is represented by the heaviest purchases?
 - A. From January to June.
- Q. Now with respect to your particular business, are there seasonal sales that fluctuate throughout the year?

 A. Yes, sir.
 - Q. What are the periods of the heaviest sales?
 - A. Through January and June.
- Q. With respect to your own particular business, can you tell us——

The Court: I don't understand your answer. The sales are biggest through January to June? You said the catch was biggest from January to June. [204]

The Witness: And the sales are greatest through January to June.

The Court: During the same period?

The Witness: Yes.

The Court: From January through June?

The Witness: That is right.

· Q. (By Mr. Rubin): Now calling your attention to that portion of Government's Exhibit 6 entitled "Fish Landed at the Wharf," will you state the amount of fish that was landed at the wharf and purchases by you for the month of May 1946?

A. For the month of May 1946, 27,272 pounds; value, \$1611.97.

Q. Now looking at the same portion of the exhibit, will you tell us the amount of pounds of fish landed at your wharf from July 1st through July 16 of 1946?

A. From July 1st to July 16th, 11,365 pounds; value, \$1379.59.

* * *

- Q. Calling your attention to the same portion of the fish landed at your place of business at the San Pedro wharf, will you look at the Government's Exhibit No. 6 and tell the [205] Court and jury what that indicates as to the amount of poundage of fish or the dollar value landed at your place of business during the month of June 1946.
 - A. No poundage in June; no value in June.
- Q. Now, Mr. Ross, do you purchase fish from any other source besides the persons who land fish at your wharf and sell it to you and from the landward side from points within and without the state of California—I withdraw that question.

Do you purchase fish from any points originated other than within the continental limits of the United States?

A. Yes, sir.

- Q. And are those fish landed on the landward side of your fish wharf? A. Yes, sir.
- Q. Do you know of your own knowledge the origination point of such fish?
 - A. The Gulf of California.
 - Q. The Gulf of California? A. Yes, sir.
- Q. How is that fish transported to your place of business? A. By truck.

- Q. From what country or countries?
- A. From Mexico. [206]
- Q. During the month of June 1946, did you receive any such shipments from Mexico?
 - A. No, sir.
- Q. Do you know whether or not of your own knowledge that trucks brought fish from Mexico to the fish wharf or the vicinity of the fish wharf during June 1946?

 A. Not to my knowledge.
- Q. Now, Mr. Ross, to whom do you sell your fish, to what type of organization or outlet?
- A. The bulk of our fish is sold to the Oriental trade.

The Court: To what?

The Witness: Oriental trade. The Court: Oriental trade?

The Witness: Yes, sir. [207]

Q. (By Mr. Rubin): And do you deliver that fish yourself?

The Court: What do you mean by that?

The Witness: Mostly to Japanese and Filipino croppers who work as agricultural workers in the state of California.

The Court: You mean it is sold here?

The Witness: Yes.

The Court: Directly to those people or through other outlets?

The Witness: Through other outlets such as Stockton, Sacramento, Fresno, who in turn sell it to these Filipino people and to Japanese workers.

The Court: Then you do not sell your fish to the Japanese or Filipinos, you sell it to somebody else, do you not, to dealers?

The Witness: Retail dealers.

The Court: Where?

The Witness: In the State of California.

- Q. (By Mr. Rubin): Is there any other category of persons or class of persons to whom you sell fish at your fish wharf?
 - A. We sell to house-to-house peddlers.
 - Q. How do they obtain the fish?
- A. By coming to the wharfside, to the landward side, and buying the fish direct. [208]
- Q. Can you tell us approximately the percentage of your business that is done with these peddlers who come to your place of business and pick up fish?

 A. Approximately 10 per cent.
- Q. Now during the month of June did you sell any fish to peddlers who came to your fish wharf to pick up fish?

 A. No, sir.

Mr. Andersen: To which we object as incompetent, irrelevant and immaterial.

The Court: Overruled.

- Q. (By Mr. Rubin): Mr. Ross, you testified yesterday, I believe, that on or about July 1, 1946, the lines were withdrawn from around the fish wharf. Thereafter did you purchase fish from fish that was landed at the fish wharf on the seaward side?

 A. Yes, sir. [209]
- Q. Mr. Ross, do you know whether or not there was any fluctuation in the number of customers to whom you sold fish prior to June 1946, immediately

(Testimony of Arthur Webster Ross.) prior to June 1946, during June 1946 and immediately subsequent to June 1946?

Mr. Andersen: Same objection.

The Court: Overruled.

The Witness: Yes, sir.

Mr. Andersen: Also it would not be the best evidence.

The Court: Objection overruled. [210]

Q. (By Mr. Rubin): The question is whether or not there was any change in the number of customers to whom you sold during those three periods, and I am now asking you what is the change in that number.

The Court: The change in number, or percentage.

The Witness: A loss of 70 per cent during the month of June. [211]

* * *

Mr. Rubin: No further questions. [212]

Cross-Examination

The Court: Do you ever fill orders for any of the other wholesalers?

The Witness: No, sir.

By Mr. Garrett:

Q. Where do you enter—the books are not here or I could go directly to them.

The Court: The books will be here. You can find out [273] all those things very readily by an examination of the books. If you are just trying to test the witness' memory, I suppose you can go

on. There is a reasonable limit, however, as to that.

Mr. Garrett: I understand, your Honor. I think this is material.

The Court: What the books show?

Mr. Garrett: Yes. I will merely say that I must cross-examine on the memorandum without the books themselves and that may, of course, require questions which would find their answer in the books if they were here.

Mr. Rubin: I would like to ask counsel what memorandum he is referring to.

The Court: Exhibit No. 6, I take it.

Mr. Garrett: Exhibit 6; that is correct.

Mr. Rubin: There is nothing in Exhibit 6 that refers to any of the sales that counsel is examining the witness on now.

The Court: That is what he is trying to find out. Mr. Garrett: The exhibit, if your Honor please, refers to the gross sales.

The Court: If you merely desire to know what is in the books, I think perhaps in the interests of time saving you might defer this section of your cross-examination of this witness until they are made available and you can look at [274] them. Otherwise we can go on here into the fish business, buying and selling fish, and that is what this line of questioning involves.

Mr. Garrett: Your Honor, I have found two cases during the noon recess that I would like to call to your Honor's attention, if I might, relating to the use of this memorandum in evidence without the books themselves being here.

The Court: The books are going to be here, counsel. I think it would be appropriate to urge that point after the books are here.

Mr. Garrett: I have a few other questions.

The Court: I do not wish to restrict you in your examination, but only in the interests or time saving I suggest you defer this section of your cross-examination until the books are here, and they will be here tomorrow.

Mr. Garrett: I will abide by your Honor's ruling.

The Court: They will be here tomorrow?

The Witness: If so ordered.

The Court: They are ordered.

The Witness: All right. [275]

Q. (By Mr. Garrett): What other books did you have to go to——

The Witness: On that question, what books do you request me to bring?

The Court: Whatever books you had your book-keeper make up that memorandum from, No. 6; whatever books you used in making that up.

- Q. (By Mr. Garrett): You told me that the information on sales as to both dollars and pounds comes from your sales invoice book, is that correct?
 - A. That is correct.
 - Q. That is one book.
 - A. That is one book.
- Q. You have told me that—no, you haven't told me yet—
- A. It may be two books, because of the end of the year.

Q. One for '45 and one for '46? A. Yes.

The Court: Let's get the books, and then we can talk about that, counsel.

Mr. Garrett: I would like to know what books we are going to get, your Honor.

The Court: We are going to get all the books used in connection with that.

Mr. Garrett: I would like to ask a question about where [276] the purchases come from, where his record of purchases is kept, how he keeps that.

The Court: Why don't we just get the books, and we can see, and then you can cross-examine him on the books if there is any discrepancy.

Mr. Garrett: I will be glad to, but I just wanted to find out where all this mass of records was that he said he couldn't bring in here.

The Court: He stated he would bring them in here. Did anyone ask you to bring your records in here?

The Witness: No, sir, not until a few minutes ago. [277]

Q. (By Mr. Kenny): Mr. Ross, yesterday Government counsel asked you with reference to the conversation you had with Mr. Zafran and others in your office on the 20th of May, the Government attorney asked you if you had signed the contract which is Government's Exhibit No. 3, which was offered to you at that time, and you said that you did not sign that. Then you said: "Did you sign the contract at any other time?" and your response to that was "I did not."

Now with reference to those other times, there were several other conversations that you had during the course of negotiation with the fishermen and their attorneys, is that right?

A. Yes, sir.

- Q. And just to summarize it and make it clear for the jury from what has been discussed so far, I believe your first discussion was with Mr. Sawyer on the 17th day of May when you were negotiating the purchase of some fish from him and he gave you Government's Exhibit No. 4. Do you recall that?
- A. Yes, I recall that. But it was not on the 17th. The letter was dated the 17th, but it was some days later. [289]
- Q. That was the letter—to refresh your recollection—
 - A. The letter to the membership of the union?
- Q. Yes, which read, "For many years we have gone out fishing fresh market fish not knowing what the price would be on our return."
 - A. Yes, sir; that is correct.
- Q. Then on the 20th of May you had a conversation in your office with Mr. Zafran and four other gentlemen, fishermen, I think one of them was Mr. McKittrick, and at that time the contract, that is, Government's Exhibit No. 3, was offered you, the contract which you testified you did not sign. Then you had another conversation on the 28th of May with Mr. Zafran and at that time I think you testified that he handed you Government's Exhibit No. 5—the exhibit numbers don't mean much but it is—

The Court: The Clerk will hand it to you.

The Witness: That was the letter making the strike effective as of that date?

Mr. Kenny: Yes.

The Witness: That is correct. I remember that.

- Q. (By Mr. Kenny): The last paragraph read, "The purpose of this decision was to expedite matters and get a decision from the Government agencies in reference to the legality of signing [290] a maximum price agreement." A. Yes, sir.
- Q. That was on the 28th. Then the strike took place on the 29th?

 A. Correct.
- Q. Then on the 7th of June in your office you met with Mr. Ekdale and Mr. Margolis, the counsel for the fishermen, and certain other fishermen, that is, working fishermen?
- A. Could I have my memorandum to tell you if that date is correct?

(The document referred to was passed to the witness.)

The Witness: That meeting was with Mr. Margolis, Mr. Zafran, the dealers and Mr. Ekdale. That was the 7th.

Mr. Kenny: That is right.

- Q. Then there was another meeting on the 10th of June, also in your office. I think probably the same parties were there except Mr. Margolis was not there.
- A. Mr. Margolis was not there but in addition to that Mr. Kibre was there.

- Q. That is right. Yes. And then on the following day a conference took place in Mr. Ekdale's office at which the same parties named and Mr. Margolis was present?

 A. That is correct. [291]
- Q. (By Mr. Kenny): Mr. Ross, on the 20th of May when Mr. Zafran and the four other fishermen came into the contract, didn't you at the outset of that conversation say that you would be glad to see chiseling cut out and a stabilized price agreement in effect if it was legal? A. Yes, sir.
- Q. Did you not at that time hear Mr. Zafran point out to you that the principal objective of the fisherman was to obtain a guaranteed price for their catch before they went out into the high seas to catch their fish?

 A. Yes, sir.
- Q. Weren't there also statements made by Mr. Zafran at that time that when prices dropped to the fishermen it affected the whole industry and the consumers adversely, [293] because it caused men to leave the fishing fleet and cut down the number of fishermen?

 A. Yes, sir.
- Q. And was there not at that time a discussion—no, I think this is more properly on the occasion that Mr. Margolis was present with you in Mr. Ekdale's office—a discussion of the provisions of the fishermen's marketing act? A. Yes, sir. [294]
- Q. Mr. Margolis or—we will say Mr. Margolis—at that time discussed with you that the fishermen were exempt from the acts which you feared be-

(Testimony of Arthur Webster Ross.) cause they were covered by the Fishermen's Cooperative Marketing Act, isn't that right?

A. That was discussed between Mr. Ekdale and Mr. Margolis in my presence. [297]

* * *

- Q. Mr. Ross, didn't these two lawyers in your presence on that day, in discussing the Fishermen's Marketing Act, say that it was an act that provided that if fishermen got together in a cooperative to sell their fish that under an order made by the Secretary of Commerce against the price arrangement that they have worked out, that they were exempt from the operation of the Sherman Antitrust Law? Wasn't that [298] discussed?
- A. The two lawyers discussed the Fishermen's Cooperative Act, and as I am not a lawyer it is beyond my mentality or teaching or learning to understand what they were talking about.

Mr. Kenny: I think before we are through the intricacies of the fish business will convince us in which the real mentality lies.

Q. Do you recall also at that time whether or not those two lawyers did not discuss a decision that had been handed down in 1943 by District Judge McColloch of the Federal District Court in Portland, Oregon, affecting a fishermen's union in the Columbia River?

Mr. Rubin: Now, if your Honor please, that is objected to for the same reason, and for the further reason that any reference to court decisions is not within any of the issues in this case. [299]

* * *

The Court: The objection is overruled. The question is, whether or not they discussed some decision by Judge McColloch.

The Witness: Yes, sir.

Q. (By Mr. Kenny): Did not Mr. Margolis say to Mr. Ekdale in your presence that Judge McColloch had treated the fishermen's union as a cooperative and say that because of the recognition given by modern federal statutes—

Mr. Rubin: I am going to interrupt, if you will pardon me, Judge Kenny, because I feel that that is a highly improper question. This is not a motion to dismiss out of the presence of the jury. It has no relationship to any of the issues of fact in this case, nor have any been suggested by the interrogating counsel. We submit that any such conversation is incompetent, irrelevant and immaterial, and certainly by counsel for the defendants, if anything, is a self-serving declaration and wholly without any issue in this case whatever.

Mr. Kenny: Your Honor, I can just answer that with one point, and I think the sooner the door is opened and the jury knows what the real controversy is here the better.

Mr. Rubin: The real controversy is made out, if your Honor please, by the indictment and the plea to the general [300] issue.

The Court: Yes, a plea of not guilty. [301]

The Court: How is that material?

Mr. Kenny: It is material. In the first place, your [302] Honor, it will be material on the issue whether there has been equal enforcement of the law.

Mr. Rubin: How would that be material?

The Court: That is a question of law, Judge Kenny, that the judge must decide and it is quite inappropriate to make such a statement like that before the jury because the jury are not to determine that question.

Mr. Kenny: I will be perfectly glad to discuss this out of the presence of the jury. I merely want to point out the government has made their argument in the presence of the jury.

The Court: The government has merely stated their objections without stating any argument, and the insinuation that it would be unfair to the defendants to hear you out of the presence of the jury and hear their objections in the presence of the jury is hardly warranted by the record. If you care to argue the matter I will extend you that opportunity, but in any event it should be brief and to the point.

The jury will retire to the jury room. Re member the admonition. [303]

* * *

Mr. Kenny: I understand exactly the contrary. Where concealment exists, that is being denied us by this court.

The Court: Read that statement.

(The record was read.)

The Court: I think, Judge Kenny, you owe an apology to this court. This court has not indicated a desire that anything should be concealed, or the slightest indication of unfairness to any of these defendants. Indeed, I think it would be rare where you could find anybody who has indulged the time to these defendants that I have indulged since this case began.

Mr. Kenny: I would owe your Honor an apology—

The Court: And you do so.

Mr. Kenny: Can I be heard? I would owe an apology if the record was as read by the reporter. It was not quoted correctly. I said the possibility of concealment exists on the original record. That is what was left out of that. And we are denied an opportunity to see those original records.

This is no reflection upon the court, and I hate to reflect on the reporter, but it doesn't reflect what I said.

The Court: Well, the witness here has indicated a willingness to bring his fish tags. [334]

The Witness: That is right.

Mr. Kenny: That is all we want.

The Court: What other books have you got?

The Witness: For the local fish coming in on the wharf side the Fish and Game tickets, I will bring into court the original tickets that you are requesting.

Mr. Kenny: That is what we want.

The Witness: I will bring a receiving record to show you the fish we bought from outside points.

Mr. Kenny: That will be helpful.

The Court: Does that cover the data from which this report was made up?

The Witness: Yes, sir. Plus I have to give you the sales of every individual customer. That will be quite a voluminous——

The Court: Don't you have a book?

The Witness: Yes, a book. I will be glad to bring it all. I will be glad to bring it all.

The Court: For the period covered by that?

The Witness: The whole period covered by those figures.

Mr. Rubin: Could you bring that by 10:00 o'clock?

The Witness: I will endeavor to bring it by 10:00 o'clock, if I have to be up all night to do it.

The Court: I don't think there is any necessity for you to do that. [335]

Mr. Dixon: We could use another witness, perhaps, and permit Mr. Ross the additional time, if he wants it, to get this information. I hate to impose upon him if it is going to be an imposition in the sense that he has to work all night to get this material.

The Witness: I will be glad to get it by the 2:00 o'clock session.

Mr. Kenny: I might suggest, also, that when it is here it might be helpful for some of us to go over the record so it will save time; so, perhaps, if the government has another witness who could oc(Testimony of Arthur Webster Ross.) cupy the whole day we could look over the records, and that would save everybody's time.

Mr. Rubin: I think that will be very disorderly. May I make this suggestion? I think Mr. Ross suggested the 2:00 o'clock recess period. Mr. Ross, may I ask you this: Can you have one of your associates utilize tomorrow morning's time in obtaining that and have him bring them to court by tomorrow at 2:00 o'clock, so that you can be here available in person?

The Witness: That's right, I could.

Mr. Rubin: You will not, therefore, have to work all night, is that correct?

The Witness: Yes.

Mr. Rubin: Will that be satisfactory to your Honor?

The Court: I don't think this witness should be discommoded. [336] He is a witness here; he is not the government or defendant, and if it would suit his convenience better to return tomorrow afternoon at 2:00 o'clock, or the next day at 10:00 o'clock, he may be excused until that time, if the defendants want them that badly.

Mr. Kenny: We want them very badly, your Honor.

The Court: The records, however, when they will be available, I do not think should be made available to the defendants for just general examination. Only such examination as shall be made in the presence of the government agents and the defendant himself or one of his agents.

Mr. Kenny: That is quite all right, your Honor. That is what we had in mind.

The Court: All right. You can be excused until—when can you get them?

The Witness: I will be here at 2:00 o'clock.

Mr. Dixon: I am sorry to interrupt again. I thought if there were any other questions of Mr. Ross, in accordance with Mr. Rubin's suggestion we might continue with the cross-examination and complete that, if your employee could have the actual records here tomorrow at 2:00. In other words, let's finish with you so you can get back to your business.

The Witness: That can be arranged, to have them delivered here at 2:00 o'clock tomorrow and I can be here at 10:00. [337]

The Court: Fine. You can be excused.

Now, Mr. Garrett?

Mr. Garrett: I have asked your Honor to imagine that the evidence——

The Court: I think we can all argue better tomorrow morning at 9:30. Why don't we come back here then?

Mr. Garrett: That is a good idea. It suits me fine.

The Court: Recess until 9:30.

(Whereupon, at 4:40 o'clock p.m., an adjournment was taken to 9:30 o'clock a.m., Thursday, March 20, 1947.) [338]

Los Angeles, California, March 20, 1947 9:30 o'Clock A.M.

The Court: Ex parte?

The Clerk: No, your Honor.

The Court: Local 36. Usual stipulation except for the jury?

Mr. Anderson: Yes, your Honor.

Mr. Garrett: So stipulated.

Mr. Dixon: So stipulated.

The Court: Mr. Garrett?

Mr. Garrett: I will make a short talk after a long interruption because I have had a chance to coalesce my ideas on relevancy in my own mind.

Now we have this situation in which the United States goes into a series of conferences and brings evidence of them here.

The Court: The United States goes into a series of conferences?

Mr. Garrett: Yes. I mean by producing evidence of certain conferences in the series, the evidence of the witness Ross.

The Court: You mean goes into the matter of conferences.

Mr. Garrett: Yes, as to the Zafran conferences, or quite a few of them. I don't mean to imply that the United [342] States was physically in those conferences.

The Court: I understand.

Mr. Garrett: The effect of that evidence produced by the Government, if competent and if relevant, can only be relevant on the issue of indicating the formation, nature and scope of the conspiracy.

That having been done, as I stated before, your Honor, the memorandum is used—not used under circumstances which to my mind were proper—the Government knowing it was being used I think should have called it to our attention, but we had it called to our attention otherwise, and examined the witness on it.

Now as to the question of the relevancy of contents of the conversations such as was brought out by my cross examination—I don't think there is any question as to its competency, and the examination proposed by Mr. Kenny—I want to say that I think that the relevancy of the evidence we seek to adduce by bringing out hitherto unexplored events in these conferences is threefold: first, evidence of what transpired between those present at those conferences I believe is relevant on the defense issue of entrapment.

The Court: Defense issue of what?

Mr. Garrett: Of entrapment. If the defense can show from the evidence of their own witnesses or by cross examination of the United States' witnesses that there is a reasonable [343] amount of evidence upon entrapment to go to the jury, the defense will be entitled to an instruction thereon and to have that issue, as a matter of defense, go to the jury.

Take the evidence of the witness Ross so far. Take his evidence as to the filing of documents and communications with the Department of Justice. Take his evidence indicating, or which may be a basis for indication on the part of the jury that combinations, combinations price-fixing in their nature, of these dealers and against the fishermen have been going on for a long time in the past.

The Court: There isn't any evidence of that. There is evidence in the record now that it was stopped in 1939 or '38 or some place in there. [344]

ARTHUR WEBSTER ROSS

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

The Court: Ladies and gentlemen of the jury, yesterday afternoon the following question was asked by Judge Kenny of the witness on the stand:

"Did not Mr. Margolis say to Mr. Ekdale in your presence that Judge McColloch had treated the Fishermen's Union as a cooperative and say that because [376] of the recognition given by modern Federal statutes—"

He was interrupted by an objection by Mr. Rubin. The objection to the question is sustained. You are instructed to disregard the implication and imputations contained in the question by Judge Kenny as put to this witness.

Mr.- Kenny: Now, your Honor, we of course submit to your Honor's ruling but I think we should make our record by completing that question.

Mr. Rubin: Now, if your Honor please, we object to that.

The Court: I think that was one of the reasons why we had a recess yesterday, so that we could discuss all of the matters. I have instructed the jury that they must disregard the implications contained in the portion of the question which was asked. Therefore it would be improper to continue with that question.

Mr. Kenny: Very well. I don't insist, your Honor, that we conduct it in the presence of the jury. But in order that we make our record complete, we would have to have that question completed and ruled upon and then we should be allowed to make an offer of proof. I think probably if it has to be conducted outside of the presence of the jury, we will submit to that request on the part of the Government. There will be no intelligible record for us unless that question is completed.

Q. (By Mr. Kenny): Mr. Ross, at the conversation that took place at this conference to which I referred in the question just asked and ruled upon by the court——

The Court: And, in order that the witness may be correct, that was the conference of June 11th?

Mr. Kenny: That is June 11th.

Q. (Continuing)—did not Mr. Ekdale in the presence of Mr. Zafran, yourself, and others, dictate a proposed letter dated June 11th and addressed to the Fish Dealers of the Port of San Pedro, and I will show you a copy of that letter?. [379]

* * *

The Court: It will be marked for identification—what is there,—two letters?

Mr. Kenny: Two letters, yes.

The Court: A and B.

* * *

The Clerk: A is dated June 11th to the Fish Dealers of the Port of San Pedro, and B is addressed to the International Fishermen and Allied Workers, Local 36.

(The documents were marked as Defendants' Exhibits A and B for identification.)

The Court: The record will show the clerk has marked them A and B and handed them to the witness.

(The question was read by the reporter.) [381]

The Witness: No sir.

- Q. (By Mr. Kenny): Did Mr. Margolis dictate such a letter in your presence?
 - A. Mr. Margolis did dictate such a letter.
- Q. And did Mr. Ekdale make suggestions at the time that Mr. Margolis was dictating the letter, as to what should be put into the letter?
 - A. Not to my knowledge.

Q. Did Mr. Ekdale take part in any discussion during the time that letter was being dictated?

A. The two lawyers, yes, did talk with each other.

Q. And that was written by Ekdale's secretary, written up by Mr. Ekdale's secretary?

Mr. Rubin: That is objected to as incompetent, irrelevant and immaterial, if your Honor please, who wrote the letter.

The Court: Overruled. Was that typed by Mr. Ekdale's secretary, or do you know?

The Witness: This Exhibit A?

Mr. Kenny: Yes.

The Witness: The tentative letter was dictated to Mr. Ekdale's secretary.

The Court: Is that the text of the tentative letter?

The Witness: This is the text of the tentative letter [383] by Mr. Margolis.

Q. (By Mr. Kenny): Now, I direct your attention to exhibit, for identification, number B, and ask you if that letter was drafted and dictated by Mr. Ekdale in your presence at that particular conference?

A. At that conference Mr. Ekdale dictated a tentative letter, in my presence, the subject matter of "B."

Q. And that was, in fact, the tentative letter that he dictated, was it not?

A. I don't know. It was dictated in my presence. I did not see the letter.

- Q. I will ask you if that letter is not the precise letter that was dictated by Mr. Ekdale at that time.
 - A. I do not know.
- Q. Do you remember the substance of the tentative letter that was to be drawn, one from the Fishermen to you,—to the Fish Dealers, and one from the Fish Dealers to the Fishermen's Union? Do you remember that?
 - A. No, sir. [384]

* * *

The Court: He said he didn't remember.

- Q. (By Mr. Kenny): You do remember that tentative letters were drafted at that time?
 - A. Yes, sir.
- Q. And do you remember anything that was said by any of the parties as to the purpose of the drafting of those letters?
- A. The only thing that I can recall was that both lawyers agreed to put down and state what each side was trying to arrive at some kind of an agreement whereby the strike would be over.
 - Q. For the purpose of settling the strike?
 - A. Yes, sir.
- Q. Did Mr. Margolis at that time when he was dictating this letter, did you hear him say these words——

Mr. Rubin: Just a minute. If your Honor please, that is objected to as being incompetent, irrelevant, immaterial; not tending to prove or disprove any of the issues of this case; that the letter, if it is at all admissible, is the best evidence.

Mr. Kenny: Well——

Mr. Rubin: Just a moment, Mr. Kenny. That if it is a [385] letter from the defendants to anybody under these circumstances, as the initial letter it is certainly self-serving on behalf of the defendants, and we submit, if your Honor please, it is improper to endeavor to get this letter before this jury by asking him if at the time of dictating the letter Mr. Margolis said certain things. We submit, if your Honor please, that we will object to this question on the ground that it is incompetent, irrelevant and immaterial, and on the other ground stated. If your Honor will read the letter, I think your Honor will know— [386]

The Court: You were reading from Exhibit A? Mr. Kenny: I was going to ask the witness if he overheard Mr. Margolis say certain words which are in the letter, but he also said them orally of course if he dictated them.

The Court: Which exhibit?

Mr. Kenny: That would be A.

The Court: The objection is sustained.

Mr. Kenny: I would like to be heard on it.

The Court: The objection is sustained. Proceed.

Mr. Kenny: So that I won't trench on this question, I will make an offer of proof on that at such time as your Honor indicates I can. You do not desire me to make this offer in the presence of the jury?

The Court: No. I think we better go ahead

with the witness and the jury until 12:00 o'clock at least and perhaps at 2:00 o'clock for a few moments you may make an offer of proof, and by that time you will know what you want to offer.

Mr. Kenny: It has been suggested that I should offer, and I will offer, Exhibit A in evidence at this time.

Mr. Rubin: Same objection, if your Honor please, and on the further ground that there is no foundation laid, and particularly on the ground that it is self-serving. What these defendants write to someone else concerning any matter concerning this situation or others is not material at this time.

Mr. Kenny: Merely on the point of foundation, your Honor, Exhibit A was identified by the witness.

The Court: The objection is sustained. It will continue to be marked for identification.

Q. (By Mr. Kenny): Now I will ask you if you did not prepare with your attorney a letter dated June 14, 1946, addressed to the International Fishermen's & Allied Workers. I show you a copy of this letter.

The Clerk: C for identification.

(The document referred to was marked Defendants' Exhibit C for identification.)

* * *

Mr. Rubin: That is objected to as being completely beyond the scope of the direct examination;

(Testimony of Arthur Webster Ross.) incompetent, irrelevant and immaterial as to any issues in this case. [388]

The Court: Let me see it.

(The document referred to was passed to the court.)

Mr. Kenny: I would like to be heard on that objection, your Honor.

The Court: The objection is sustained.

Mr. Kenny: I asked to be heard on that, your Honor.

The Court: You can be heard on it when you make your offer of proof.

Q. (By Mr. Kenny): I will ask you, Mr. Ross, at the conference you testified to on direct examination on May 20, which was participated in by Mr. Zafran and four other gentlemen, one of whom you believed to be Mr. McKittrick, if a letter dated March 1st, written by the Department of Justice—

The Court: Dated March 1st?

Mr. Kenny: March 1, 1946.

Q. ——written by the Department of Justice——

Mr. Rubin: Just a moment, Mr. Kenny. I think you know to what I am objecting and interrupting.

* * *

The Court: What do you propose to ask the witness concerning this letter, without reading the text of it?

Mr. Kenny: I was going to ask him if the matter of the [389] Department of Justice—

Mr. Rubin: Just a moment.

The Court: No, no. What do you propose to ask him about this letter? Whether he saw it or got it or didn't see it or what?

Mr. Kenny: I want to ask him if he saw it and if it was not discussed at that meeting, and what the discussion was.

The Court. All right. That would be your question to the witness. Now Mr. Rubin indicates that he will probably object.

Mr. Kenny: Decisively, if your Honor please, because this is precisely the subject matter that is—

The Court: Just a moment. Do not state anything that was discussed outside of the presence of the jury. Just state the grounds of your objection, please.

Mr. Rubin: The question as given thus far is objected to on the ground that it is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues of this case, and beyond the scope of the direct examination; no foundation laid.

The Court: The document will be handed to the clerk and given an identification number, No. D.

The Clerk: Defendants' Exhibit D. [390]

(The document referred to was marked Defendants' Exhibit D for identification.)

Mr. Kenny: I might point out that there is no complete question before the court. I was interrupted before I had completed the question.

The Court: The complete question, if it involved the use of the text of the letter, is not only improper but objectionable. I asked you if your question anticipated that you would ask this witness if he saw this letter and if it was discussed.

Mr. Kenny: That will be obviously the purpose of my attempting to lay this foundation.

Mr. Garrett: The objection is to a foundational question, your Honor, as was the objection to the previous proffered exhibit.

Mr. Kenny: I think perhaps to clear the matter up we should have the question read.

The Court: Then suppose that you state your question, Judge Kenny, without quoting the text of the letter and refer to it by identification as Exhibit D. It now has an identification number.

Mr. Kenny: How far can I go in identification? The Court: It has an identification, Exhibit D for identification.

Mr. Kenny: I can show it to the witness and ask him if [391] the subject matter of that was discussed? I am trying to comply with the rules here.

The Court: If in your question you will refrain—I am not trying to tell you how to ask your question except that counsel has objected to the use of this letter, or the text of it, so I think you understanding that what I am getting at is that

until the court has passed on whether that letter or the text of it is or is not admissible the text should not be disclosed to the jury by the question, and it now having an identification number, whatever you want to say about the letter can be said by using it, as we always do, by an exhibit number for identification.

Mr. Kenny: Does that mean, your Honor, that I may not ask the witness whether the subject—

The Court: Suppose you ask the witness a question without disclosing the text of the letter until it is passed upon. If it is admissible, then of course the text can go to the jury.

Q. (By Mr. Kenny): You have seen Exhibit D, Mr. Ross?

A. (Examining document.)

The Court: The question is, have you ever seen that letter before?

The Witness: I have not. [392] By Mr. Kenny:

Q. During the discussion at this time and place, did not Mr. Zafran say that the northern California fishermen had been told by the Department of Justice——

Mr. Rubin: Now just a moment, if your Honor please. We submit again that it is an effort to get before this jury improper testimony indirectly that they cannot get directly and which is completely immaterial to this case. We object to it on those grounds.

We submit, so far as this line of questions is concerned, that it might well be made an offer of proof out of the presence of the jury and that your Honor can rule upon it then.

The Court: Any letter which the Department of Justice mailed to any other fishing association is immaterial and is incompetent for the purpose of proving any of the issues in this case which have yet been developed so far. The objection will be sustained.

Proceed.

Mr. Kenny: At this time, your Honor, without belaboring the point, to make the record I would like to offer Exhibit D in evidence.

Mr. Rubin: Same objection on the grounds stated, your Honor.

The Court: I will reserve ruling until after you argue [393] your offer of proof.

By Mr. Kenny:

Q. During that discussion on the 20th of May, did not Mr. Zafran, when you were discussing whether or not such a contract as he offered you was legal, did he not say to you that under the Sherman Act labor was a commodity and contracts of a cooperative, agricultural or horticultural association were exempt from the provisions of the Sherman Act?

- A. I do not recall.
- Q. Do you recall any discussion about the exemptions at that time, the exemptions that labor

(Testimony of Arthur Webster Ross.)
and agricultural and horticultural cooperatives
have from the operation of the Sherman Act?

- A. No, sir.
- Q. Did not Mr. Zafran point out to you at that time——
 - A. On May 20th?
- Q. On May 20th. It was discussed at later meetings, though, was it not, meetings at your office or Mr. Ekdale's office?
- A. It was discussed between the lawyers in Mr. Ekdale's office.
- Q. Was it not discussed that while the fish dealers might not combine——

Mr. Rubin: Just a moment. Now, if your Honor please, I object to the question on the ground that it is ambiguous, [394] it is compound, it is beyond the scope of the direct examination, and I submit, if your Honor please, that it is an effort to get before this jury matters that are wholly incompetent, irrelevant and immaterial and that cannot be gotten before this jury directly.

* * *

Mr. Rubin: Your Honor please, I am placed in the position of objecting to questions the effect of which will leave an inference with the jury and which will not be able to be eradicated as a result of those questions if they are improper. I am sorry that I am placed in the position of interrupting counsel at this time, and I realize that it makes for a very incomplete record, and may I suggest that these too be the subject of an offer of proof?

The Court: Yes, I think so. I thought we had

(Testimony of Arthur Webster Ross.) more or less settled that this morning. But in the event that it wasn't, in the meantime the objection to that question will be sustained and you can

include that in your offer of proof.

Mr. Kenny: I am not trying to bring anything before the jury that shouldn't be brought, but I do have to make my record. I owe that to my clients. I have not received [395] specific guidance on these questions as they arise and certainly the question in the Clayton Act was not discussed this morning, or the exemptions.

Q. Now in that discussion in Mr. Ekdale's office on the 11th of June, did there not take place a discussion between the lawyers in your presence of a decision by the National War Labor Board——

Mr. Rubin: Here I go again, your Honor. I am getting to feel like a jack-in-the-box in person, and I hate to do it, but it becomes necessary because your Honor has ruled time and again this morning concerning the subject matter of this discussion. The discussion of law between the lawyers and whether or not these things are legal or illegal, we submit, if your Honor please, is completely immaterial to whether or not these defendants have conspired to do the things the indictment charges them with doing. We submit that is the issue and that is the issue to which evidence should be directed. We object on that ground.

The Court: I do not think that this discussion between the lawyers on that date is admissible.

Mr. Kenny: Your Honor is ruling then—

The Court: And I am sustaining the objection to that question because by the way it begins it indicates that it comprehends some other legal discussion between lawyers. You may reserve that to your offer of proof as well. [396]

Mr. Kenny: Since I have other questions, if it is your Honor's ruling that no words uttered by lawyers at that conference can be used to cross examine this witness, I will abide by it, but I need that guidance.

The Court: I would suggest that perhaps time might be saved if you waited and made it all in an offer of proof, whatever you propose to prove, but in the present state of the record and the present state of these proceedings I cannot see how any discussion that was had between the lawyers concerning any law or any decision or any letters by anybody else to anybody else is material or competent or admissible at this time.

Mr. Kenny: I am sure I will be able to convince your Honor at that time. I don't want to bore the jury with it, but I think with an orderly development of the case we might come to grips with the issue now outside the presence of the jury and we will make an offer of proof, if your Honor cares to do that.

The Court: Do you have other things that you can continue with the cross examination of this witness on?

Mr. Kenny: I intend to develop all of these negotiations between the parties leading up to the

strike and during the strike and leading up to a purported settlement of the strike. If I have to make an offer of proof on all of it, I want the jury to know it and I want the jury to know the [397] whole background of those negotiations.

Mr. Rubin: We want the jury to know all the material evidence too, your Honor please.

The Court: Of course everybody wants the jury to know a lot of things but, as you know, Judge Kenny, we have rules of evidence which control the flow of information and evidence to the jury.

If you are unable to proceed further with this witness until you make an offer of proof, I will excuse the jury again and you may make your offer of proof at this time.

Mr. Kenny: That will be satisfactory.

The Court: All right, ladies and gentlemen of the jury. Remember the admonition.

(Whereupon at 11:20 o'clock a.m., the jury retired from the court room.) [398]

* * *

Mr. Margolis: In making this offer of proof, in order that the record may be clear, because I was personally involved, I will refer to myself as "Mr. Margolis. [404]

* * *

The Court: I want to get some comprehensive statement of the offer of proof.

Mr. Margolis: My offer of proof will refer to the meetings of June 7th, June 10th and June 11th concerning which the witness Ross testified in response to questions by Mr. Garrett. We offer to prove if the witness were asked appropriate questions and allowed to answer them, that he will testify as follows: That at the meeting of June 7th at which were present himself, Mr. Ekdale, Mr. Margolis, several other owners representatives of fish markets located on the same dock or wharf as was and is the plant of Mr. Ross, and a number of other fishermen, that in the course of that discussion reference was made by Mr. Margolis, Mr. Zafran, and others of the fishermen to the letter of May 27, 1946, which is in evidence as People's Exhibit 5, and particularly to the last paragraph of that, reading:

"The purpose of this decision was to expedite matters and get a decision from the government agencies in reference to the legality of signing a minimum price agreement." [405]

That in connection with that, Mr. Margolis, Mr. Zafran, and others stated as follows: that——

The Court: To whom?

Mr. Margolis: Stated in this conference, stated to everybody who was present, your Honor. I have already indicated who was present, and these statements were made, all of them, made in the course of the discussion between the parties. I will state Mr. Ross will testify that he and Mr. Ekdale and several other owners or representatives of fish dealers were there speaking for the fish dealers, and that Mr. Margolis, Mr. Zafran and several other fishermen were there speaking for Local 36 of the Fishermen's Union, one of the defendants in this

case, and that was so understood by all of the parties at that conference. What I am about to relate were discussions that took place between the parties acting in the relationship that I have indicated. Referring again to the letter of May 27, 1946, it was stated by Mr. Margolis, Mr. Zafran, and others, that the fishermen had had a similar experience that they were having here with respect to the Alaska fishermen, that the Alaska fishermen had for many years negotiated minimum price contracts covering both fishermen who did not own their boats and fishermen who did own their boats and gear, and when the season for 1946 came around the Alaska Salmon Packers Association refused to sign an agreement for that season because it [406] represented to the union, the same international union that is the parent body of Local 36, that if it signed such an agreement it would be prosecuted by the anti-trust division of the Department of Justice. [407]

That in that case the International said the fishermen will not go fishing in Alaska until such time is there is a minimum price agreement because they want to know what they are going to receive for their product and they are not going to buy a pig in a poke.

That pursuant thereto there was an interchange of correspondence, which took place only after the fishermen said, we will not fish——

The Court: You mean that is in the Alaska case?

Mr. Margolis: Yes. I am relating the conversation, your Honor, which is part of the offer of proof. I am relating the conversation, what I am stating now, so that the record will be entirely clear, which is what was stated by Mr. Margolis, Mr. Zafran and other fishermen at this meeting of June 7, 1946 with the parties whom I have indicated. That is what I am relating now, what was stated by them.

May I have that last portion?

(The record referred to was read by the reporter, as follows:

("That pursuant thereto there was an interchange of correspondence, which took place only after the fishermen said, we will not fish——")

Mr. Margolis: ——without knowing what price we are going to get for the fish which we catch, and that after such refusal the Department of Justice, through Mr. Wendell [408] Berge, wrote a letter to the Alaska canned salmon industry advising it that there would be no criminal prosecution because of the execution of such a contract fixing minimum prices, and that pursuant to that letter a contract was signed.

The Court: Is that the letter of March 1st?

Mr. Margolis: That is the letter of March 1st.

The Court: You offer to prove that that letter was exhibited to this witness?

Mr. Margolis: I don't think that the letter was exhibited to the witness. It was referred to. I am merely offering to prove at this time——

The Court: That some letter?

Mr. Margolis: No, that this letter was referred to in the conversation.

The Court: How can this witness know if he didn't see the letter?

Mr. Margolis: All right. I am offering to merely prove what was said in the conversation. This letter, I am sure, at a later date—that will be part of my offer of proof—was shown to Mr. Ekdale. Whether Mr. Ross looked at it or not, I don't remember. I don't want to make an offer of proof as to facts which are not clear in my mind.

May I have that last part again, please?

(The record referred to was read by the reporter as follows: [409]

("* * * through Mr. Wendell Berge, wrote a letter to the Alaska canned salmon industry advising it that there would be no criminal prosecution because of the execution of such a contract fixing minimum prices, and that pursuant to that letter a contract")

Mr. Margolis: Change that to a series of contracts were signed, which contracts covered both fishermen who had no interest in boats and fishermen who owned the boats from which they were fishing, and that pursuant thereto the boats did go

to Alaska, the fishing season was conducted, and of course there had been no criminal prosecution.

It was stated further—I am referring to the same people talking.

The Court: This is on June 7 yet, is it?

Mr. Margolis: Yes, your Honor; June 7th.

That people did not believe that the Department of Justice, when the chips were down, would treat Local 36 any differently than they treated the Alaska canned salmon industry. [410]

* * *

Mr. Margolis: And furthermore that the Department of Justice had already gotten its fingers burned when it had tried a similar case in Portland before Judge McColloch, and that Judge McColloch had thrown the case out of court.

Furthermore, that the War Labor Board had held during the period of the war that prices paid to fishermen owning boats were to be treated as wages because in truth and in fact and from an economic standpoint that is what they actually were, and this had also been.

In the conversation reference was also made to the Fishermen's Marketing Act at that time or at a subsequent meeting—I am not sure what the evidence will show in that regard, but it will show either at that meeting or at the meeting of June 11th, or the meeting of June 10th, one of these meetings—a memorandum with regard to the Fishermen's Marketing Act was presented collectively to the representatives of the fish dealers and was looked at, I think, by all [412] of them, but anyway it was presented to them, and the matter of the Fishermen's Marketing Act was dismissed, being claimed by the representatives of the fishermen, whom I have already mentioned at the meeting of June 7th, that the Fishermen's Cooperative Marketing Act did exempt fishermen collectively bargaining for prices through an organization from the provisions of the Sherman Antitrust Act as long as they did not combine with processors or middlemen for the purpose of fixing prices to the consumer.

The same persons speaking also said at the meeting of June 7th that the union did not insist at that time and had never insisted upon the precise contract which was submitted to the dealers and which is in evidence as Government's Exhibit No. 3, but that the problem with which the union was concerned was the following problem, that fishermen before going out fishing do not know what price they will receive for their fish, that when they come back from a fishing trip they may be offered a price which not only doesn't pay them for their labor but which doesn't even compensate for the expenses of the trip, that the effect of this has been to drive people out of the fishing industry, to hurt the whole fishing industry, and by decreasing the supply of fresh market fish to actually raise prices to consumers, and that the fishermen were interested in stabilizing the industry so that every section of

the industry could benefit, and by increasing the volume of fish actually lower prices to the consumer. [413]

That at least as a temporary matter, and until all of the legal problems had been worked out the Fishermen's Union was willing to consider entering into any kind of an agreement through which the individual fisherman, before he went out on a trip to catch fish, would know what price he would receive for his fish when he brought it in, and that in the absence of such a contract, with the uncertainty of things as they were, the fishermen simply could not continue fishing, and that it was unfair of the dealers or of anybody else to expect fishermen to go out and fish without knowing whether they are even going to get back the expense of their trip. Numerous instances were cited where fishermen had gone out, believing that a certain price would be paid, and had come back with a load of fish, and in order to avoid breaking the law by destroying the fish, they had to sell for a price which was less than the amount which it actually cost them on the trip, let alone any compensation for their labor.

That in response to this Mr. Ekdale, Mr. Ross, and I think one or two of the other representatives of the fish dealers, spoke and said that they recognized the injustice, the unfairness to the fishermen, that certainly a fisherman was entitled to know what he was going to get for his fish before he went out on a trip, that the whole industry was being

hurt and prices to the consumer were in fact being increased [414] by cutting down on the volume of fish, by reason of the failure of the fishermen knowing in advance, or the inability of the fishermen to know in advance, what price they would receive for their fish.

But that these dealers had been indicted, or had been either indicted or prosecuted or proceeded against, I believe it was said in 1939 or, for the sake of my offer of proof, several years before the time of that conference, that they had had their fingers burned and that they were not going to take any chances in entering upon any kind of an agreement which the Antitrust Division might claim was in violation of the Sherman Antitrust laws.

In addition to that, Mr. Margolis and Mr. Zafran stated that there was a great difference between the proceedings referred to by the Fish Dealers and the present contemplated or proposed arrangement between the union and the Fish Dealers in that the proceedings referred to by the Fish Dealers involved a combination between fish dealers for the purpose of fixing the price which they would pay to the fishermen and in turn the price for which they would sell their fish to the wholesaler or peddler or anyone else to whom they did sell, and that that was quite different from an agreement which would tell a fisherman how much he was going to get for his fish before he went out on a trip and, in effect, would tell him how much he could expect to get for [415] his labor.

The representatives of the Fish Dealers—

The Court: This is still on June 7th?

Mr. Margolis: This is still on June 7th.

The Court: It was a long conference.

Mr. Margolis: I would say that this conference lasted, my recollection is, a couple of hours, and I am sure I am omitting much more than I am including, if the court please. If there is anything wrong in my offer of proof it is an omission.

The dealers then stated, and I include Mr. Ekdale as a representative of the dealers, that they felt that there was justice to our position and suggested that Mr. Ekdale and Mr. Margolis consider the possibility of devising some other type of an agreement through which the fisherman could have his price fixed for a particular voyage before he went out on a trip, and that they felt that if some such agreement could be worked out that it could be entered into without even the slightest fear of a claimed violation of the antitrust laws, and that they would be willing to enter into such an agreement.

The Court: Just a moment. Let me hear that statement over again.

(The statement referred to was read by the reporter, as set forth above.)

The Court: Go ahead.

Mr. Margolis: It was then stated, either by the fishermen representatives or by the dealer representatives—

The Court: What are you going to offer to prove? An offer of proof is that somebody said something, not just anybody.

Mr. Margolis: I think the witness will testify that either one or the other—I think when my offer is completed it will be quite clear—that either one or the other of these two groups suggested that Mr. Ekdale and Mr. Margolis consult further on the matter and that a meeting be held in a few days to see if the details could be worked out, that whichever side made the suggestion the other side acquiesced in the suggestion, and it was agreed that should be done, and the meeting at that point broke up with the understanding that Mr. Ekdale and Mr. Margolis would try to arrange to set a date very early to work out this sort of an agreement.

I want to confine myself to what we can prove through this witness for the purpose of the offer of proof. Does your Honor want me to go on with matters which cannot be included with this witness but which are part of the picture?

The Court: The only thing we are concerned with now is the cross examination of this witness.

Mr. Margolis: Then I will eliminate certain other [417] things which occurred to which this witness could not testify.

I offer further to prove that the defendant Jeff Kibre had been absent in the East, that this was known to Mr. Ross, that the defendant Jeff Kibre had been absent in the East during the entire time from the beginning of May on and even before, and that he had not participated in any of the transactions with Mr. Ross in any of the meetings, that on June 9th or 10th Mr. Kibre returned from the East, and that on June 10th, at Mr. Kibre's request, a meeting was held in Mr. Ross' office, which he has described, at which were present—— [418]

* * *

Los Angeles, California; Thursday, March 20, 1947; 1:45 p.m.

Mr. Margolis: I want to return for a moment to the meeting of June 7 and continuing with the offer of proof which was begun during this morning's session.

At the meeting of June 7 previously referred to, the fishermen's representatives who have been previously identified as having been present at that meeting, stated that they were willing to and would withdraw their demand for the contract which is in evidence as Government's Exhibit 3, but that they did insist on some arrangement whereby the fishermen's price would be agreed to before he went out fishing for [420] the fish which he would catch on that particular trip.

This was part of the discussion previously referred to in the offer of proof and leading up to the reference of the matter to the attorneys, Mr. Ekdale and Mr. Margolis.

Further, with regard to the letter which is in evidence as Government's Exhibit 5, it was stated that the fishermen in that letter had meant that they believed that the Antitrust Division, when finally forced to render an official decision from Washington, would, as it had done in the case of the Alaska fishermen, render a similar opinion or give a similar statement here. And it was that matter that was referred to in the said letter in evidence as Government's Exhibit No. 5.

I want to say that the letter was not referred to in that conversation as being in evidence as Government's Exhibit 5; I am merely identifying it here in that way.

Now returning to the June 10 meeting, and I think that I had previously stated in my offer of proof who was present at that meeting—at the meeting Mr. Kibre stated that he had just returned from the East and had just become fully cognizant of the matters which had taken place in his absence, which included the presentation of the contract, the demand that it be signed and the beginning of the strike and the activities pursuant thereto; that he had contacted Mr. Margolis and that Mr. Margolis had told him—— [421]

The Court: Let's see. You weren't present on June 7th?

Mr. Margolis: I was not present. I am making an offer, your Honor, as to—on June 7 I was present; yes. On June 10 I was not present, but I am making an offer of proof——

The Court: You were present on June 11?

Mr. Margolis: I was on June 7 and June 11.

I was not present on June 10, but I am making an offer of proof with regard to what happened.

The Court: On June 10?

Mr. Margolis: On June 10, upon information that I have received from persons who were present at that meeting. I do not purport to know any of these things with regard to June 10 of my own knowledge.

I am still stating as my offer what Mr. Kibre is saying at this meeting of June 10.

Mr. Kibre said that he contacted Mr. Margolis, Mr. Margolis had informed him of the meeting of June 7, and that he had also learned of that meeting from other union officials; that Mr. Margolis had told him that he had a pretty definite idea for a specific kind of an agreement which could be entered into which could provide for an agreement with respect to each boat before it went fishing, for the price that would be paid for the fish on that particular trip, and that Mr. Margolis had stated that he had talked over the phone to Mr. Ekdale about this and that Mr. Ekdale, [422] while not finally committing himself, had said that he thought that this was a possible basis for settlement, and that Mr. Ekdale thought that probably this approach eliminated even the questions which he had in his mind concerning any possible evasion or claim of evasion of the Sherman Antitrust Act.

Q. That Jeff Kibre went on further to state that he was very anxious to settle this matter, to get deliveries of fish resumed to these dealers, although

fishing had been going on and was going on at that time, was being delivered to others, that he was anxious that these dealers, too. would start getting some of the fish that was being caught, and that he thought that the suggestion which Mr. Margolis had made——

Mr. Schwartz: Who is "he,"—Ekdale or Kibre? Mr. Margolis: Kibre. This is all what Kibre is saying. He thought the suggestion of Mr. Margolis was one which could be considered, and that there ought to be an attempt to work out either that or something along those lines, so that the situation could come back to normal.

There was further discussion along the same lines that had taken place at the meeting of June 7th, some of the same decisions and laws were referred to. In addition, Mr. Kibre pointed out at that meeting that there was then pending in San Francisco a civil action by some dealers against the San Francisco Local of this International attacking the closed shop provision of an agreement identical to the one which had original been proposed by the union in San Pedro, except for the fact that the San Francisco agreement contained a closed shop provision, whereas the Southern California agreement contained neither a closed shop provision, nor any kind of [424] security provision resembling or relating to, in any way, a closed shop.

That he thought that nevertheless the action in the north might clarify some of the questions which were in the minds of the parties, because certainly if the court up there held that the closed shop provision was legal, there could be no question about the rest of the agreement being legal, and that he was confident that the court would have to so hold, and that he felt that he was perfectly willing and that the union was perfectly willing to hold in abeyance further demands for the contract originally proposed until the action in the North was brought to a conclusion, there was a decision there by which the parties probably could be guided in toto or in part.

And that, therefore, something along those lines ought to go into any agreement which was entered into in settlement of the strike then pending.

Mr. Kibie also stated—and this was similarly stated by some of the other fishermen who were present—that the prices that they were asking for, the union was asking for in its original agreement, was certainly reasonable, and that their reasonableness was evidenced by the fact that the original agreement which had been proposed contained O.P.A. ceiling prices which had been computed on the basis of average 1942 prices, and that certainly when everything [425] else had gone up and the cost of living had gone up, and the cost of supplies to the fishermen had gone up, when every item which the fishermen had to pay out had gone up, wages generally had gone up, that it would not be unreasonable to ask not for the top price which had been paid in 1942, but the average price which had been paid in 1942; and that he thought that was very, very reasonable, and he couldn't see how any reasonable man could object to it. And if it was unreasonable, then an action could be brought under the Fishermen's Marketing Act by the Secretary of the Department of Agriculture, but he was confident that there would be no basis for such a proceeding.

He stated, however, that in view of the attitude taken by the fish dealers that he was willing to abandon, for the present, until the law was clarified further—although he thought it was clear enough at the time—until it was clarified further, the question of the original contract, and proceed along the general lines of the suggestion made by Mr. Margolis.

He stated that he had asked Mr. Margolis to attend that meeting of June 10th, but that Mr. Margolis had either a court engagement or a previous appointment and couldn't be there, but that Mr. Margolis could meet at 9:00 a.m. on the next day, June 11th.

He then suggested that such a meeting be held. During [426] the course of his statements the representatives of the fish dealers, which included, as I have stated, Mr. Ross, Mr. Ekdale, and several other fish dealers, stated that they still held to their original position that they would not sign the contract, which for reference is Government's Exhibit 3, but that they were very anxious to settle the dispute, and they were certainly agreeable to considering the proposal advanced by Mr. Margolis, Mr. Ekdale particularly stating that he thought that an agreement could be worked out which would meet every possible legal objection. [427]

When the proposal was made by Mr. Kibre for a meeting of June 11th, representatives of the fish dealers stated that they would be very glad to meet in Mr. Ekdale's office at 9:00 a.m. on June 11th, and the meeting ended on that note.

The next day, June 11, 1946, a meeting was held in the office of Mr. Ekdale in San Pedro. Present at this meeting were Mr. Ekdale, Mr. Ross, and one or two other fish dealers or representatives of the fish dealers, Mr. Kibre, Mr. Zafran, Mr. Margolis and perhaps one other fisherman.

This meeting started shortly after 9:00 a.m. and broke up just about noon.

At the beginning of the meeting Mr. Margolis stated that as the fish dealers had previously been informed on several occasions, the main thing in which Local 36 was concerned was that arrangements be completed so that when a fisherman went out to catch a load of fish he could know in advance what price he would get for his fish, it therefore determining whether or not he could afford to go fishing and receive a return for his labor on that fishing trip, and that he thought that an agreement providing for negotiations between the union, as the representative of the individual fishermen, and the fish dealers or fish dealers involved, separately for each trip before each fisherman went out on the trip was a perfectly proper and unquestionably legal method of obtaining the objective, which was the basis of the demands made by [428] Local 36.

The Court: You are talking now?

Mr. Margolis: Yes. I use only the third person for the sake of the record.

The Court: I understand. I was just wondering whether or not that was Mr. Kibre or you giving that final legal opinion.

Mr. Margolis: As you know, your Honor, attorneys are sometimes called upon to give legal opinions to their clients. They do the best they can.

I wonder if I could perhaps have Exhibits A and B. It would help me as I go along with my offer.

(The documents referred to were passed to counsel.)

Mr. Margolis: I think I might shorten my offer of proof, although it might be objected to as a conclusion, and if there won't be that objection I could shorten it by saying that each of the matters set forth in Defendants' Exhibits A and B for identification were discussed.

As I say, that is a conclusion. If there is no objection to making the offer of proof in the form of that conclusion, it will save time. I want to make my offer technically correct.

I wonder if the Government would state if there is any objection to that offer from the standpoint of a conclusion, not from any other standpoint.

* * *

Mr. Dixon: I do not see any objection to it on that ground, your Honor. It is as to the form and not the substance. We wouldn't object as to the form, in the interests of expediting the proffer of proof.

Mr. Margolis: After this discussion, Mr. Ekdale called his secretary into his office. Incidentally, during all of this time there were present the parties whom I have mentioned at the outset, and while the main discussion was between Mr. Margolis and Mr. Ekdale, Mr. Kibre participated and Mr. Ross participated, and from time to time Mr. Ekdale would ask Mr. Ross whether that was okay with him, and Mr. Ross would say yes, or no, as the case would be. It was that kind of a conference, and discussion with everybody participating, although the principal discussion, let's say the most words, [430] were spoken by the two attorneys.

The Court: You mean you have to have somebody swear to that?

Mr. Margolis: I think the Court can take judicial notice of that.

Then Mr. Ekdale called his secretary in and either Mr. Margolis or Mr. Ekdale began to dictate the letter, which is Defendants' Exhibit A. Whoever began to dictate the letter, the letter was dictated by the two attorneys together, that is, one attorney would dictate a sentence and the other attorney would say, well, let's make a change here, let's change this or let's put a comma in, or let's make two sentences out of that, and so with the two attorneys cooperating or endeavoring to reach an agreement in that way this letter, Exhibit A, was dictated.

In the course of it the two attorneys from time to time referred questions to their respective principals as to wording about matters contained in this letter.

Then when the letter, Defendants' Exhibit A, was completed it was read back to everybody—by everybody I mean everyone who was present in the room—by Mr. Ekdale's secretary, and I think one or two or perhaps a few more changes were made as it was read back, and the attorneys turned to their respective principals and said, is that satisfactory, and everybody who was asked that question said, yes, that is [431] satisfactory.

Then Mr. Ekdale dictated—this followed immediately afterwards in the same meeting—dictated Defendants' Exhibit B with Mr. Margolis from time to time making a suggestion or two. The similar procedure was followed as to Defendants' Exhibit A. After the letter was dictated it was read back and perhaps a change or two was made. Anyway, it was read back and the parties stated it was satisfactory.

By that time it was very close to noon, 12:00 o'clock, and Mr. Margolis stated that he had an appointment which he had to keep in Los Angeles by 1:00 p.m., and that he would have to leave and couldn't wait for the letters to be typed up, but inasmuch as they had been read back it would be pretty much only a question of proofreading the letters as to correctness, and that he would go on to Los Angeles.

Mr. Kibre stated that although he had already taken up with the union the general approach set forth in the letters, as a matter of procedure he would have to get formal approval for these letters, for the letters to be signed, but there was no doubt but that approval would be obtained. [432]

Mr. Ross stated that he would have to talk to some of the other fish dealers, but there was no question that everybody would be willing and agreeable to signing these agreements, and there was no reason why resumption of delivery of fish by the fishermen involved to the dealers could not start, perhaps, the next day or very shortly thereafter.

Arrangements were made for one of the fishermen who was there to come back and pick up the copies of the letters when they were completed, so that the union would have copies to present to a meeting to be called that afternoon.

He stated further that as soon as the formalities had gone through, which would be that day or early the next day—no specific time limit being set—that the agreements would be executed and the strike would be terminated.

By the agreement, so the record will be entirely clear, I am referring to Defendant's Exhibits A and B, the union, Local 36, to execute Exhibit A, and the fish dealers to execute Exhibit B, and the interchange of letters to constitute the agreement between the parties, the interchange of letters which are in evidence here.

The Court: Do you propose to offer proof that they were signed by the union and the dealers?

Mr. Margolis: No; I am going to show that they were never signed.

The Court: You what? [433]

Mr. Margolis: I am going on with my offer of proof now to show they were never signed.

Thereafter Mr. Zafran contacted Mr. Ross and Mr. Ekdale, either late that afternoon or early the next day——

The Court: That is June 11th?

Mr. Margolis: Either late the afternoon of June 11th or early the day of June 12th, 1946, and advised them that the union had gone through the procedure of approving the form of settlement previously referred to, and that they were now prepared to execute the agreement in accordance with the discussion which had taken place at Mr. Ekdale's office on June 11th.

Mr. Ross and Mr. Ekdale said that they had not yet been able to complete arrangements for signing their part—their letter, that is, the letter which is marked for identification as Defendants' Exhibit B, but that they expected to be able to do so shortly.

There were several such conversations which took place over the period between June 11th and June 14th. On the date of June 14th, 1946, the union, Local 36, defendant here, received from the fishermen—excuse me a moment. I was inquiring as to

whether we had the original. We think the government has the original of this letter. Is that right?

Mr. Rubin: We have the original. Would you like it a minute? [434]

* * *

Mr. Margolis: May we substitute the original for the copy which has previously been marked?

The Court: Do you have any objection? [435]

Mr. Rubin: No objection.

The Court: Call it C.

Mr. Margolis: On June 14, 1946, Local 36 received the letter which has been marked Defendants' Exhibit C, for identification, signed, as appears thereon, by various fish dealers, including the witness Mr. Ross; that the name "Ross" on there is in the handwriting of Mr. Ross, as his signature, on behalf of the American Fisheries, Inc.; that the other signatures thereon are the signatures of the other fish dealers whose places of business are located on the same wharf as the place of business of Mr. Ross, and that this letter was prepared, signed, and sent by the signatories to Local 36, the said fish dealers acting collectively in sending this letter to said Local 36. That the letters marked for identification as Defendants' Exhibits A and B, respectively, were never signed—well, Defendants' Exhibit B was never signed by the company—by the fish dealers. May I have your 253?

The Court: By the union?

Mr. Margolis: Exhibit B was to be signed by the fish dealers. Exhibit A was to be signed by the union. [436]

And that the union did sign and send to each dealer a copy of Defendants' Exhibit A, dated June 11, 1946. I think that completes our offer of proof. Of course, along with that offer of proof we would consider as an offer the documents A, B and C.

Mr. Garrett: In order to save time, if your Honor please, may it be stipulated that I have made the same offer of proof and the documents with the witness Ross on the stand under cross-examination by me?

The Court: Surely. In other words, I still assume the same rule would apply: Anything offered by one defendant would be on behalf of all the rest of them, and any objection, unless it is specifically disclaimed.

Mr. Garrett: Then it will be so stipulated?

Mr. Rubin: So stipulated.

Mr. Dixon: May the Court please, I will be very brief.

The Court: Let me ask a question first.

Mr. Dixon: Yes, your Honor.

The Court: On direct examination, the last conversation which you asked Mr. Ross about in which any of the defendants participated was May 29, according to my record here, is that correct?

Mr. Rubin: I believe there was further testimony that there was a conversation with Mr. Sawyer during the pendency of this altercation. [437]

The Court: That was on the day of the strike.

Mr. Rubin: That is correct.

The Court: Where he talked to him, which was May 29, was it not?

Mr. Rubin: That is right, your Honor.

The Court: And thereafter you asked the witness Ross about no conversations with any of the defendants?

Mr. Rubin: That is correct, as I recall.

The Court: That was my impression on reading the record.

Mr. Dixon?

Mr. Dixon: May it please the Court, our objection, of course, to this is that it is way, way beyond the scope of the direct examination of the Government and is immaterial.

The Court: I think it is, counsel. I think there is nothing better settled than that a person who calls a witness may limit the scope of cross-examination by limiting his own direct examination of the witness, and the direct examination was limited to conversations, the last one of which was on May 28 or 29, whichever date that was, and then only with the defendant Sawyer.

The examination permitted yesterday by Mr. Garrett of the witness Ross going to his credibility is a matter which is with the control of the Court, and I think is sufficient examination to test the witness' credibility and his recollection so that the jury can determine whether he is or is not [438] a credible witness, or his recollection is one that can be relied upon.

On the basis that all of the things offered in the offer of proof made by Judge Kenny and by Mr. Margolis, and joined in by the remaining defendants, is beyond the scope of the direct examination, the objection will be sustained.

I do not mean to indicate by that, that under appropriate circumstances or the orderly proof that these same things may or may not be subsequently admitted. That I am not indicating at the present time, but I am indicating that they are not admissible by further cross-examination of this witness along those lines.

Call the jury down. [439]

* * *

Mr. Garrett: If your Honor please, before Mr. Kenny resumes may I move that the exhibit marked for identification as Defendant Sherman's Exhibit A be received in evidence?

The Court: It is received in evidence.

(The document referred to was received in evidence and marked Defendant Sherman's Exhibit A.)

The Court: Mr. Ross, will you resume the stand?

ARTHUR WEBSTER ROSS

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

The Court: Judge Kenny, you were cross-examining him.

Mr. Kenny: Yes, your Honor.

Cross-Examination (Continued)

By Mr. Kenny:

Q. Mr. Ross, are you familiar with an organization known as the Western Seafood Institute?

A. Yes, sir.

The Court: By the way, I think I should advise the jury that there was an objection pending, was there not, to a question?

Mr. Kenny: To a partial question, your Honor. The Court: The objection was sustained.

- Q. (By Mr. Kenny): You were a member of that, weren't you, Mr. Ross? A. Yes, sir.
 - Q. What did the Western Seafood do?
- A. It was a function of all of the fish dealers in Southern California from Santa Barbara to San Pedro, centralized so that we could cope with the OPA in interpreting regulations.
- Q. And you, as a matter of fact, hired an attorney from the OPA for that purpose, didn't you?
 - A. At one time; yes.
 - Q. Mr. Bradbury, was it?
- A. Mr. Bradford, I believe it was; a colored gentleman.

- Q. Did you ever hire a Mr. Aliotto as attorney for you?

 A. No, sir.
 - Q. You are still a member of that institute?
 - A. No, sir.
 - Q. When did you terminate your membership?
- A. Within the past year. As a matter of fact, the institute is dissolved.
- Q. As a matter of fact, the institute was dissolved when this case was brought, wasn't it, about the time this indictment was returned the fish dealers broke up their organization?
 - A. Later than the strike period.
 - Q. Later, but how much later?

Mr. Rubin: Just a moment, if your Honor please. That is objected to as being certainly immaterial and beyond the scope of the direct examination. There is no reference in this case to a Western Seafood Institute for the purpose of disseminating information about the OPA.

The Court: It would be admissible on the ground of bias or interest of the witness. That is the only possible materiality that I can see.

Mr. Kenny: Your Honor doesn't want to instruct the jury [442] for that limited purpose, do you, at this time?

The Court: That is the only materiality that I can see.

Mr. Rubin: We would like to ask counsel what the materiality is.

Mr. Kenny: The witness testified that there was

(Testimony of Arthur Webster Ross.) no organization of fish dealers. Now we have an admission that he was in an organization of fish dealers.

The Court: Then you are going to the bias or credibility of the witness?

Mr. Kenny: We want to pursue this to show that these fish dealers combined and made it necessary for the fishermen to seek a price agreement to protect themselves against the organized fish merchants. Now that is the purpose of the thing.

Mr. Dixon: If the Court please, I rise to object to this line of questioning and any further line of questioning of this witness outside of the scope of the direct examination.

The Court: If that is the purpose of it, the objection is sustained, and the jury are instructed to disregard the remarks of counsel. Self-defense is not a defense in a conspiracy case or a violation of the antitrust law.

Mr. Kenny: Your Honor, will it be impossible then for me to ask this witness questions——

The Court: If it is that purpose and the remarks which [443] you have just made. I have instructed the jury are to be disregarded by them. They have no place in this case.

Mr. Kenny: I have your Honor's ruling on this Western Seafood Institute and we will drop that for the time being.

The Court: It is admissible to test his credibility or to show his bias. If you want to cross-examine him on that and for that limited purpose,

(Testimony of Arthur Webster Ross.) that is correct, but if it is for the other purpose then it has no place in this case. [444]

Mr. Kenny: I am more interested in getting to the jury the operation of the fishing business, and I wondered if your Honor's ruling was going to limit me.

The Court: I don't know. Proceed with the question.

Mr. Kenny: The question I am now going to pursue was the actual mode in which these dealers buy their fish. I am going to try to prove that they buy it collectively.

The Court: Ask your question how they buy their fish. I can't read your mind.

Mr. Kenny: I am telling you. I am trying to make it as open as possible, your Honor.

The Court: Very well.

- Q. (By Mr. Kenny): Mr. Ross, I think you said that there were about 40 or 50 boats from which you bought fresh fish.

 A. Yes, sir.
- Q. And I think the court asked you that question, also, and you replied to that effect. Actually there are about 200 boats that bring fresh fish into San Pedro, small boats?
- A. There might be more. I don't know the number, I am sorry to say.
 - Q. The number you buy from is 40 or 50?
 - A. That is what I would estimate.
- Q. You have been in the fishing business since 1927; [445] would you be able to estimate from that experience that you have had that there are actually about 200 small boats that bring in fish?

- A. I would estimate that there might be more than that.
- Q. And you said that you deal with the captain of the boat, or whatever member of the crew can speak English, when you are negotiating for the purchase of the fish. These 40 or 50 boats—about how many would you say have a crew of three?

 A. Are you limiting me to three?
 - Q. If you describe—

The Court: How many have a crew of three, if you know?

- Q. (By Mr. Kenny): If you can tell us what the sizes of the crews are on the boat, just give us a general picture of it.
- A. They run from small crews of three up to as high as 15, as high as 18.
 - Q. The smallest crew is about three?
 - A. Yes.
- Q. And the highest is 15 to 18. When the fish are brought in, do you, your firm, for example, the American Fisheries, do you buy all of the catch from one boat, or when the boat comes in with a load is that catch, portions of it, bought by other dealers, including yourself? [446]
- A. Should it be a small boat with a small catch, I may buy the whole lot.
 - Q. And if it is a large catch?
 - A. If it is a large lot I buy whatever I need.
- Q. Do you have any discussion with the other—say, for example, one day there comes in a surplus of fish, more fish than you need, what becomes

(Testimony of Arthur Webster Ross.) of that surplus, how is that handled? Is it destroyed or distributed on some pro rata basis between the various dealers? How is that done?

A. First, if the fish comes in, I buy what I think I need.

The Witness: I buy what I think I need. If I should sell it I buy still some more the next day. You then say if there is a surplus?

Q. (By Mr. Kenny): Yes.

A. If it is a surplus, as far as I am concerned, I don't buy it.

Q. Do you know what happens if the fish isn't bought? Is it thrown over the side?

A. That I wouldn't know.

- Q. In 27 years you don't know—do you know of a single incident in the last 27 years as to what happened to surplus fish if you didn't buy it? [447]
- A. The surplus fish is not surplus, as far as I am concerned. I buy what I need for my business, and I sell it. I am not interested—I am not selling the fish, I am buying the fish. I only buy my own needs.
- Q. Maybe this will make it clearer to you. What if one day the fish that is brought in is less than what you need, less than what the other people need?

 A. I try to get as much as I can.
- Q. There is no arrangement at all whereby everybody gets some kind of a fair share of the catch that is brought in? That is, by "everybody" I mean your merchants there on the wharfside.

A. If the captain wishes it that way, yes. If a captain wants to take care of four or five markets, or all 10 markets, he will divide it. That is natural from his point of view, because when he does come in with a surplus he wants to get rid of the whole lot of this fish; therefore, if he pleases them when it is scarce, he wants to be taken care of when it is plentiful.

Q. These captains who want to make friends, how many of them would you say are there, percentagewise, of the 40 or 50 with which you deal that spread the short catch around?

A. I couldn't say as to that.

The Court: By the way, do you know of any surplus of fish? Has there been surplus from people from whom you buy? [448]

The Witness: Many a time there were more fish than I could buy.

The Court: More fish than the people on the market could buy?

The Witness: There is never a surplus of fish, because if there is a surplus of fish the price will go down to a point where it will find a demand.

The Court: So the fishermen sell their fish, is that what you are saying?

The Witness: Yes, sir, that is what I am trying to say.

Q. (By Mr. Kenny): Are you familiar with a trade term known as "seconds?"

A. Yes, sir.

Q. And actually aren't those seconds fish that have spoiled or some of them spoiled because it was waiting a buyer too long?

A. I don't know about waiting a buyer. Second fish may come through spoilage in the packing and in the catching, and in the placing in the hold of the ship; or if the ship is delayed in coming home, or if the ship is delayed and is lacking ice and has not been properly taken care of.

The Court: Mr. Ross, let me ask you this question: The fishermen, the fishing fleet comes in and they sell all the fresh fish market will absorb that day?

The Witness: Correct. [449]

The Court: Then do they have any left?

The Witness: Yes, sir.

The Court: What do they do with it,—wait until the next day?

The Witness: Wait until the next day and offer it for sale again.

The Court: They keep it until it is gone?

The Witness: That's right.

The Court: Or do they take it over to the canneries and sell it?

The Witness: It all depends on the variety. Most varieties of fresh fish are eventually sold on the fresh fish market.

The Court: So the man who has a boat full of fish, he stays there until he sells the fish before he goes out again?

The Witness: That is correct.

The Court: That is the general course of business?

The Witness: That is the general picture.

The Court: I see.

Mr. Kenny: While counsel is examining that, I will take up another subject.

The Court: I will ask him another question if I may on that, counsel.

Mr. Kenny: All right. [450]

The Court: These 40 or 50 boats that you buy fish from, do they generally have ice to ice the fish in the hold?

The Witness: About 50 per cent of them would have ice.

The Court: Is there any relationship between the size of the boat and the one that has ice?

The Witness: Yes, sir.

The Court: What is that?

The Witness: The small boat goes locally fishing in the morning or overnight and can come in in the early morning without ice; whereas the boat that goes out for days carries ice.

The Court: The small boat that has its fish there, does he keep the fish in the hold if he can't sell it that day?

The Witness: No, sir; he sells it that day, or he may re-ice it at the wharf.

The Court: Then there are places for him to re-ice his fish if he can't sell it?

The Witness: Yes.

The Court: And is that the custom?

The Witness: That is the custom.

Q. (By Mr. Kenny): Mr. Ross, I will ask you if this has the signature of your secretary. Is that Mrs. Pitt?

The Court: Let's mark it for identification, so the [451] Circuit Court of Appeals will see something besides "this" in the record.

Mr. Kenny: I am sure my friends of the government do not expect to appeal.

Mr. Dixon: We will speak for the government, Mr. Kenny.

The Witness: This represents a purchase of fish by my company on March 17, 1947, covering 402 pounds of rock cod at 12 cents.

Q. (By Mr. Kenny): You might explain to the jury just what the process is——

The Court: What letter is that?

The Clerk: E.

- Q. (By Mr. Kenny): ——when the fish is delivered to you, what do you do with the tag, if you give a copy to the fisherman, and so on. I am not familiar with it. It might make it clear to the jury to know just how that is done.
- A. The captain, owner of this boat, the American No. 2, Mr. George Knowlton, whom I believe is a defendant——
 - Q. Yes, sir, this is Captain Knowlton right here.
- A. (Continuing): ——he evidently sold this fish to my company on March 17, 1947, that is, of this year, and he came in and evidently negotiated for rock cod, a box of rock cod, maybe two boxes

of rock cod, a boat box is 200, 250 pounds, he evidently sold 402 pounds of fish at 12 cents; we [452] gave him this original ticket as his receipt, a second copy we keep ourselves, a third copy is turned in to the Fish and Game Commission. Each one of these receipts is numbered.

- Q. As a sample trip, Mr. Knowlton, or Captain Knowlton's boat comes in,—where would it tie up? Would it tie up at the wharf near your place—
 - A. Yes.
 - Q. Near your place of business?
 - A. That is correct.
- Q. To make it clear to the jury, where are the other fish buyers' places of business?

Mr. Rubin: You might refer to Government's Exhibits 1 and 2, Mr. Kenny. They are pictures of that area.

Mr. Kenny: That might be helpful. I might imagine the jury has seen this.

- Q. He would tie up a boat—
- A. Alongside the wharf, which consists of a building approximately 500 feet long.
- Q. And then how does the captain make it known to you that he has rock cod, a load of rock cod? How does he do that?
- A. Sometimes we happen to be out on the wharf looking for boats to come in. I would recognize that particular boat as being a rock cod boat at this time of the year. If I needed rock cod, naturally, I would wait and talk to him, or [453] he will come along and talk to me.

- Q. Some times they come in and talk to you, and sometimes you—
- A. I go out and talk to him. If I am anxious to buy fish, I am anxious to be the first man to the boat to buy from him.
 - Q. What about the other fish dealers?
 - A. That is their concern.
 - Q. What have you observed them doing?
- A. If they are anxious for fish, they will be trying to get to the boat, too; if they are not anxious for fish, I presume they will go about their business if they don't want it. [454]

* * *

Q. (By Mr. Kenny): I will show you here four tags signed——

The Court: Are those marked as one exhibit for identification?

Mr. Kenny: I think so; yes. That will be F? The Clerk: Defendants' F for identification.

(The documents referred to were marked Defendants' Exhibit F for identification.)

Mr. Kenny: They are signed by Independent Fish Company, Star Fisheries, Standard Fisheries Company, Ocean Fish Company, Zankich Brothers, Terminal Fisheries, and Pioneer Fisheries Company.

- Q. I will ask you if those are not all fish merchants in the same position as you are on the pier.
 - A. They all are.

- Q. I will ask you if Exhibit E shows that the rock cod that you bought was at 12 cents a pound, that is, on last Monday, the day the trial started. Is that correct?

 A. Yes, sir.
- Q. Now I will ask you to examine this and tell me what these fish dealers paid for rock cod on that same date.
 - A. They evidently paid 12 cents for rock cod.
 - Q. Each one of the fish dealers?
 - A. Yes, sir.
 - Q. Paid the same exact price of 12 cents? [456]
 - A. Yes, sir. That is what the tickets show.
- Q. And does that happen very often, a coincidence of that kind, Mr. Ross?
- A. It very frequently happens that a load of fish goes at the same price. Naturally the fishermen coming in and he gets 12 cents for the first box of fish he sells, he is not going to drop down his price unless he has to.
- Q. How frequently would you say that their—would you say it is more frequent than infrequent that a uniform price, such as I have shown here, is paid on a given day for a given species of fish?
- A. I would like to be sure that that was always the case because I would know what my competition was. I have no idea what other people pay for fish.

The Court: When you buy fish.

The Witness: When I buy fish. The only thing I can tell is what I pay for it. If you would like a similar case like this, for the same captain within

(Testimony of Arthur Webster Ross.) the last month, this same captain sold me fish on one day which nobody else would buy, and I paid him 12 cents, and I believe at the second or third day thereafter he sold me out of the same load fish

- Q. (By Mr. Kenny): The fish was a day older then, wasn't it?
 - A. That would make no difference. [457]

at 8 cents of his own accord.

- Q. Tell me, Mr. Ross, how often, where a fish buyer pays, say, 12 cents, how often do you recall where a second fish buyer pays a higher price than 12 cents?
- A. When the supply is less than the demand there will then be a bidding up of the price.
- Q. How many meetings of the Western Seafood Institute did you attend, Mr. Ross?

A. Two or three as an institute, and perhaps four or five with the officers of the OPA.

* * *

The Witness: From the inauguration of the OPA up to the time that the OPA was suspended on May 20, 1946, so that would be approximately over three years.

Q. (By Mr. Kenny): At those meetings did you or any other fishermen [459] discuss—

Mr. Rubin: Dealers do you mean?

- Q. (By Mr. Kenny): ——fish dealers discuss the price paid for fish to the fishermen delivering to your wharf there?
 - A. Only in the presence of the OPA.

Q. Have you ever had, say in this last year, is it your testimony——

A. May I say this, that not all of the dealers in San Pedro were members of the Western Seafood Institute.

Q. I see. Is it your testimony that in the past year you and your colleagues, the other fish merchants on that wharf, have never talked with any one of your colleagues about the price you paid for fish that day on the wharf?

A. Only where I think that the price of fish is getting excessively high. That would be the only time. I might make a remark—

Q. I am satisfied with that answer.

Mr. Rubin: Let him finish.

The Court: He can explain his answer.

The Witness: I might make the remark that if there is an oversupply of fish, and if it is not moving, would it not be better to buy that fish or induce the captain and tell him the circumstances on the outside, which he doesn't see, to lower the price, if possible, otherwise we won't be able [460] to move it. We are the ones who move it. The fishermen can't. We are only what you would call the entrepreneurs, if you would call it that way, the in-betweens.

Q. (By Mr. Kenny): You are the entrepreneurs? A. That is right.

Q. Now tell me if the fish is not moved that isn't your loss, that is the captain's loss, isn't it?

A. When I buy fish and find there is an oversupply and if the captain sells fish later for a lesser (Testimony of Arthur Webster Ross.) price, the balance of his load, the fish that I bought originally drops that price and it is out of my pocket, the difference in price. [461]

Q. I recognize that the price of fish, a drop in the price of fish would affect your pocket, certainly, but what I am asking is, if fish is not taken from the boats, if it spoils, this surplus occurs, you don't bear the loss, the fisherman bears the loss, isn't that right?

Mr. Rubin: That is objected to as assuming facts not in evidence.

The Court: Sustained.

* * *

- Q. (By Mr. Kenny): What happens, in your 27 years' experience do you know what happens, to fish that is caught when it is not bought by you or the other fish dealers?

 A. No, sir.
 - Q. You don't know? A. No.

Mr. Rubin: That is objected to as asked and answered.

Mr. Kenny: The witness doesn't know. I will drop that line of questioning.

- Q. Now, Mr. Ross, you testified that you don't own a boat, you don't have any interest in one.
 - A. None whatsoever.
 - Q. You don't have any mortgage on a boat?
 - A. No, sir. [462]
 - Q. And you don't own a boat?
 - A. No, sir.

The Court: Do you own any nets?

The Witness: No, sir.

* * *

- Q. (By Mr. Kenny): You do know that the Standard Fish Company has an interest in boats, don't you?

 A. I don't.
- Q. Do you know that the Pioneer Fish Company has interests in boats? [463] A. I don't.
 - Q. Or the State Fish Company?
 - A. I know not.
- Q. Or the Los Angeles Fish and Oyster Company? A. No, sir.
- Q. You know of no fish dealer on the San Pedro wharf who has any interest in the fishermen's boats?
 - A. Not to my knowledge.
- Q. Did you ever know of an instance in the past where that practice existed?

Mr. Rubin: That is objected to, if your Honor please, as being ambiguous and too remote, and beyond the scope of the direct examination.

Mr. Kenny: What I am trying to find out is if they never owned an interest in the boat, or if they just recently stopped just like they stopped——

Mr. Rubin: Just a moment.

The Court: I think this is outside the scope of the direct examination. I think even the last few questions were perhaps a little outside of it, what he knows about the others. He says he doesn't know. The objection is sustained.

Mr. Kenny: May I make just one point, that this witness was offered as a man who had spent 27 years on that wharf. [464]

The Court: All right. I do not suppose he goes around looking at other people's business on matters of what they own or what they do not own. If it

is a matter of notoriety why he might know it or he might not, I don't know.

Mr. Kenny: Isn't his lack of curiosity something that goes to his credibility?

Mr. Rubin: We will submit to the court's ruling without any objection.

The Court: That is a difficult question to decide. On the matter of a man's curiosity, I don't think that that has anything to do with the veribility of his testimony.

Mr. Kenny: I think your Honor does not want me to go further into it?

The Court: The objection to the last question is sustained.

Mr. Kenny: All right.

- Q. You know of no case where any preference has been given by a wharfside dealer to any boat captain because of any interest that the boat captain might have in the boat, or put it the other way, you know of no case where, because of an interest the wharfside dealer has in a boat, that the captain gives him first preference on the fish that he brings in?
- A. I don't know of any case. Are you stating that as a question or as a fact? [465]
 - Q. I can only ask you what you know.
 - A. You say to me, you know.
 - Q. Do you know? A. I do not.

Mr. Kenny: I would like to have Exhibit 6, your Honor please.

(The document referred to was passed to counsel.)

- Q. (By Mr. Kenny): I want to ask you some questions on the fish that you handle. Apparently your total from Exhibit 6, the total amount of fish that came in by boat and landed at the wharf, was 392,158 pounds during this period of time.
 - A. That is right.
- Q. During that same period by truck, 358,810 pounds came in, is that correct, from places within California, and 56,000 pounds came from outside of California? In other words, more fish came in to you by truck than came in to you from these fishermen who have the boats?
- A. That is correct. The figures show that. That is correct.
- Q. And the value of the fish landed at the wharf is \$43,000, and the purchases that came in by truck or Railway Express were \$78,000 within California and \$12,000 from out of California, or \$90,000. In other words, more than twice in value? [466]
 - A. Yes.
- Q. Of the \$43,000 you paid out to these fishermen, you paid out \$90,000 outside of California?
 - A. Yes.
- Q. Now, you have stated that the fish that you buy from the wharf dealers go 90 per cent to what you refer to as the Oriental trade.
 - A. That is my particular business.
- Q. However, you do know that that particular trade is also supplied by fish dealers from San Francisco and elsewhere, isn't that right?
 - A. Yes, sir.

- Q. And the Sacramento fishermen and elsewhere? A. Yes.
- Q. Now, I notice your sales of fish during these two-year periods total—I won't bother doing the mathematics at this time. Do you know what an uptown fish dealer would be called?
 - A. You mean a Los Angeles fish dealer?
 - Q. A Los Angeles uptown fish dealer.
 - A. All right.
- Q. Those would be persons who are fish wholesalers such as you are. Would you say that there are approximately about 14 such wholesalers in the uptown area here in Los Angeles? [467]

* * *

The Court: Do you know how many there are? The Witness: I don't know how many there are, but I would say there might be anywhere from 8 to 14, if that would satisfy you.

- Q. (By Mr. Kenny): Would you say that generally that their purchases [468] are of fresh fish caught in what we call the Southern California area to the fish that is brought in by truck from other parts of the state and other states and foreign countries, is relatively the same as your proportion?
- A. I would say the proportion brought in from outside points compares to what local fish, as we call it, would be far greater in Los Angeles.
- Q. In other words, you roughly, by poundage, it looks like about 51 per cent fish brought in by truck and 49 per cent by boat, and about two to one in value of the catch, but you would say that

(Testimony of Arthur Webster Ross.)
that proportion is even greater, there is an even larger amount?

A. I should think so.

Q. Uptown here? A. I should think so.

The Court: You mean you are guessing?

The Witness: I am only guessing. I don't know because I don't work up here.

The Court: If you don't know, say you don't know; don't guess.

The Witness: I don't know.

The Court: The jury is instructed to disregard his previous answer on the ground that it is just a guess.

Q. (By Mr. Kenny): Now the gentlemen at the counsel table have totaled [469] up your total purchases and total sales and it shows on Exhibit 6 that you paid \$134,581 for fish during that period, and sold during that period \$167,044. Now deducting one from the other that would show a gross profit to you of \$33,000.

Mr. Rubin: Just a moment. May I see those figures?

(Exhibiting figures to counsel.)

Q. (By Mr. Kenny): I am asking you, Mr. Ross, is that your total gross; in other words, is that your total gross profit in the fish business during that 13-month period?

Mr. Rubin: Just a moment. The question is objected to, if your Honor please, as being completely immaterial to the issues of this case. It doesn't make any difference whether he made X gross profit or he lost X gross profit, in so far as

this charge in this indictment is concerned that is brought on by the United States government charging these defendants with a violation of the Sherman Act. We submit that it doesn't tend to prove or disprove any issue in this case.

Mr. Garrett: If your Honor please, it goes to the veracity of these figures.

Mr. Rubin: There is nothing in the question that tests the veracity of the particular parts except the possibility the addition.

Mr. Kenny: We certainly have a right to test the veracity [470] of this witness.

Mr. Rubin: The document is in evidence.

Mr. Kenny: And so you have put it in.

The Court: If that is the purpose of the question, the objection is sustained. [471]

* * *

- Q. (By Mr. Kenny): Mr. Ross, you said earlier this afternoon that you suffered a loss, for example, if you paid 12 cents a pound for fish and other fish dealers paid 8 cents a pound, that that depreciated the value of your inventory of fish to the extent of 4 cents; that is essentially what you said this afternoon, is that right?

 A. Yes, sir.
- Q. Tell me how do you ever find out that they have paid 8 cents?
- A. From our customers to whom we individually sell and collectively sell.
- Q. But you never go around to them, to the merchants themselves, and find out what they are paying?

 A. Positively not.

Q. When is it brought to your attention that somebody has cut the market on you?

A. Because when I telephone to one of my customers, he says that so-and-so is selling for suchand-such a price. [472] If I am selling at 12——

Q. I am talking about buying prices, not your selling prices.

A. I go up to the captain or owner as he approaches each market and finds out what he can get for his fish.

Q. I understood you to say if somebody else bought for 8 cents and you already bought for 12 cents, you would be in trouble, you would sell for a loss to the extent of your fish in inventory?

A. I said if I bought for 12 cents one day, and the next day the captain of the boat reduced the price on the balance of his load to 8 cents, I would suffer a loss on the competitive market on the fish that I bought for 12 cents that I had left over.

Q. Let me ask you this question: do any of the other fish dealers on the market come to see you and see what you are paying for fish?

A. No, sir.

Q. All right. I was asking you about Exhibit 6----

The Court: Let me ask you a question in that respect. When a fellow comes to sell you some fish, does he tell you what the other people are paying for fish?

The Witness: Very frequently.

Q. (By Mr. Kenny): And you take his word for it?

A. Within limits. [473]

Q. And you never check with any other dealers to see whether he is telling you the truth?

Λ. No, sir.

Mr. Kenny: Now, your Honor, I want to get back to this document 6; I want to test the accuracy of that, if I may.

Q. This reflects that you paid out for fish during this period one hundred thirty-four thousand, round, dollars and received on sales of fish one hundred sixty-seven thousand dollars during that period. Do you want to explain that in any way to this court or jury, the fact—the difference between what you paid for fish and what you received for it during that year is thirty-three thousand dollars, and no more or less?

A. The difference is what, you say?

Q. Yes. [474]

* * :

A. Those figures I have given you reflect my books from the sales and purchases. There was \$33,000, evidently, from those figures, of a gross profit, between those figures. But from my point of view—if you know books at all, perhaps you being a lawyer you don't——

Q. No, I don't.

A. Then you would have to start with your starting inventory and your closing inventory to arrive at your annual gross profit.

Q. Maybe you can help me this way. I notice that you purchased during that period of time 807,000 pounds of fish, and sold 743,000 pounds of fish. Can you tell me—well, we will say——

The Court: What do you want to know?

Mr. Kenny: I want to know what became of that other 60,000 pounds of fish. Have you got that much on storage?

The Witness: It might be on storage. It also may be the loss in processing the fish from the state we received it [475] from the fishermen to the time we sell it.

The Court: It might be entrails, heads and tails? The Witness: Yes, entrails and heads and tails, and the other bones in fish if it were fileted.

- Q. (By Mr. Kenny): Do you process any of this fish that is brought in to you by truck?
 - A. I have already so stated.
 - Q. You do process it? A. Yes.
- Q. (By Mr. Kenny): I will put it this way: how many people are on your payroll?
 - A. At the present day?
 - Q. During this period.
 - A. During the strike, or—
- Q. No. During this thirteen-month period that is reflected.
- A. With the exception of the strike month, six permanent employees.
- Q. Then you have additional emergency help as well? [476] A. If it is necessary.
 - Q. Do you pay rent?

Mr. Rubin: If your Honor please, that is objected to as being immaterial, and certainly without——

The Court: Objection sustained.

Mr. Kenny: I am trying-

The Court: Ask the next question, counsel. Let's get on.

Q. (By Mr. Kenny): Tell me, Mr. Ross, do you want to make any further explanation of this figure of \$33,000 margin between what you paid for the fish and what you sold it for?

Mr. Rubin: The form of that question is objected to; if your Honor please.

The Court: Objection sustained.

Mr.::Kenny:: I will drop the question, your Honor.

- Q. (By Mr. Kenny): During the month of June in Southern California, customarily, would you say that the five leading species of fresh fish brought in in Southern California are barracuda, swordfish, California halibut, yellow-tail, and pompano?

 A. No, sir.
- Q. Could you tell us what the leading species are during the month of June that come in?

A. I: am sorry I can't answer that, because Mother Nature takes care of that. Customarily——

The Court: You mean it varies?

The Witness: It varies.

The Court: From year to year?

The Witness: From year to year. And all depending on what the fishermen are catching; what they want to go for.

The Court: What they want to go for?

The Witness: What they want to go for?

The Court: And what is running?

The Witness: That's right.

- Q. (By Mr. Kenny): I want to ask you, Mr. Ross, if you do not know it as a fact that June of 1946 was the third highest June in eleven years, over an eleven-year period, in the catch of fresh fish brought in in this Southern California area described by the District Attorney?
 - A. I do not know that.
- Q. During June of this year, this last June, do you not know it as a fact that there was an exceedingly heavy run of albacore during June?
 - A. I do not know. [478]
- Q. Do you not know as a fact that the fishermen dropped their fresh fishing, their fishing for the fresh market, and went out to fish albacore during the month of June, 1946?
 - A. I do not know that.

* * *

The Court: Albacore is usually caught not for the fresh fish market when it is caught?

The Witness: It is generally caught for the canneries. During the month of June we were closed.

- Q. (By Mr. Kenny): If there is a heavy run of albacore the fishermen prefer to fish for that rather than for the fresh fish market, isn't that right?
- A. I couldn't say as to that. That would be the fisherman's preference.

- Q. Haven't you observed that they prefer to fish for albacore when they can get albacore as against the fresh fish market. That hasn't come to your attention?
- A. If they can catch albacore they will go fishing for albacore because it is the highest priced fish. [479]
- Q. That is right. And if there was a heavy run of albacore they wouldn't be fishing for your market at all, isn't that right?

Mr. Rubin: Just a moment, if your Honor please. That is objected to as speculative.

The Court: Sustained.

- Q. (By Mr. Kenny): Mr. Ross, did you bring the citation or whatever it was from the Federal Trade Commission with you today?
- A. I did not. I could not find it among my records, and since coming here today I phoned to the lawyer of the Exchange at that period, Mr. Clifton Hix, and have asked him to look in his records and see if he has the copy, and if so to forward it to the Department of Justice attorneys. I talked to Mr. Walter Binns who is associated with Mr. Hix at the lunch hour and he is looking for it right now.
- Q. Did you bring your books with you, Mr. Ross? A. Yes, sir.

Mr. Kenny: Your Honor, I think Mr. Garrett wanted an opportunity to look at those books.

The Court: Is Miss Pitt here?

The Witness: No, sir.

The Court: Where are the books? Who has them?

Mr. Rubin: We brought them upstairs during the noon period. [480]

The Court: Do you want to examine them now or do you want to go over them before you examine the witness concerning the books?

Mr. Kenny: I think it would be much more interesting for the jury if we examined after we had read them, seen what was in the books and see what the purpose is, see what we had to examine on.

The Court: It is not a question of what is interesting for the jury, it is a question of what is material and admissible.

Mr. Kenny: I agree with your Honor.

As I say, I have no further questions except that might occur after an opportunity to inspect Mr. Ross' books.

The Court: All right. The books are upstairs in your office?

Mr. Rubin: Yes. They can be here inside of two minutes, if your Honor please.

The Court: I do not want to recess the court and take the time of the jury while they are here to examine books. I think that can be done after the recess tonight and before court reconvenes tomorrow morning. If you have no further questions of this witness, he may be excused until 10:00 o'clock.

Mr. Margolis: We would like to ask the witness to remain so he can help us identify the books, your Honor. [481]

The Court: All right. What time do you want to go over them, 4:30?

Mr. Margolis: It will take some little time to do undoubtedly. It might be well to proceed right now.

The Court: The jury is here. Let us get on with some more testimony. I do not want to burden the lawyers too hard, but you will have to work between sessions here. [482]

* * *

:The Court: Who do you wish to designate to go over this man's books with him?

Mr. Margolis: There will probably be two or three of the attorneys here.

The Court: Two or three attorneys?

Mr. Margolis: I think, your Honor, one of the reasons that we asked that we do it now is because I have some idea of the kind of a job this is going to be. It isn't something we can do in an hour or two. I think it is going to take quite a while to check these matters and to do so with any sort of satisfaction. We are approaching books with which we are not familiar and we want to check certain matters, [483] and it is going to take some little time.

The Court: Certainly among the vast number of lawyers there are here, seven or eight or nine representing the defendants, they can divide the work among themselves so that one lawyer, or whoever they wish, can be examining those books while we get on with this trial. I am not going to defer

(Testimony of Arthur Webster Ross.)

the trial and dismiss the jury just for people to inspect books. If you want to start your inspection at 4:30 today—where are the books? In what room?

Mr. Rubin: Room 1602 of the Federal Building.

The Court: You go to Room 1602 Federal Building after the recess and you can remain there a reasonable length of time, and if you can be there to-morrow morning, say at 9:00 o'clock—can you do that?

The Witness: I live 25 miles from the City Hall. A reasonable length of time this evening after 4:30 o'clock tonight would be all right. I don't belong to any union but——

Mr. Rubin: Mr. Ross, if that is convenient for the court and counsel, can you arrange to be here as soon after 9:00 o'clock as you can?

The Witness: I can be here in the morning, provided I get home tonight.

The Court: Say one hour tonight?

The Witness: One hour I think would be enough to satisfy [484] all of the lawyers, all eight.

The Court: All right. If you are up there at 4:30, from 4:30 until 5:30 tonight, and then if you are not, if you can get here as reasonably near 9:00 o'clock in the morning as you can, that will be all right.

Step down. Call your next witness.

(Witness excused.)

The Court: The further cross-examination and redirect examination of this witness will be de-

ferred until such time as counsel examine him concerning the books, if they desire any further examination.

Have you somebody now who can go up and be going over those books with the witness?

Mr. Dixon: Yes, your Honor. We will provide someone to be present when the examination is made.

The Court: Mr. Fuss, can be be excused to go up and go over the books now with the witness?

Mr. Margolis: Yes.

The Court: Go on upstairs now to Room 1602.

Mr. Kenny: We would like to take up Exhibit 6, if the court will permit that.

The Court: Will you be needing that with the next witness?

Mr. Dixon: No, I don't think so, your Honor. There is [485] no objection.

The Court: All right. You may take it up.

Are those the books?

Mr. Rubin: Yes.

The Court: They are going upstairs to Room 1602 now with Mr. Ross and Mr. Fuss—and I don't know your name.

Mr. Rubin: Mr. Alexander.

Mr. Kenny: Your Honor, it occurs to me that I did not offer in evidence the fish tags, that is, E and F, and I do so at this time.

The Court: Admitted.

(The documents referred to were received in evidence and marked Defendants' Exhibits E and F.) [486]

VINCENT VITALICH

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Vincent Vitalich.

The Clerk: Your address, Mr. Vitalich.

The Witness: 1348 Sepulveda Street, San Pedro.

Direct Examination

By Mr. Schwartz:

- Q. Mr. Vitalich, what is your business or occupation? A. Wholesale fish dealer.
- Q. And how long have you been in the wholesale fish business?
- A. At the present address, Municipal Fish Wharf, San Pedro, California, for thirteen years.
 - Q. Where prior to that?
- A. In retail fish business in Tulare, California, in 1925 for a period of two years.
- Q. Since 1925 you have been in the fish business, either retail or wholesale, continually, is that correct?
- A. Yes, sir; I have been in Los Angeles in the brokerage business.
 - Q. Brokerage of fish?
 - A. Fish brokerage.
- Q. Your present place of business, you say, is at the [487] Municipal Fish Pier in San Pedro?
 - A. Yes, sir.

Q. Will you relate to the jury just how you conduct your business as it relates to the purchase of fish on the seaward side?

* * *

The Court: Has it changed any, the course of doing business, your method of doing business?

The Witness: No, sir.

The Court: All right. Objection is overruled; and the running objection, same ruling.

The Witness: Do you mean how do we buy the fish?

Mr. Schwartz: Yes, from the fishermen.

The Witness: First thing in the morning we come down usually 7:00 o'clock, a little earlier, maybe a little later, and we go out on the wharf.

* * *

A. (Continuing): Then we go out on the wharf and look around the boat, see if there is any fish, we ask the captains of the boats, if there happen to be any, what fish they have, what kind of fish they have, and the amount of the fish they have; and they tell us what they got.

First thing they ask what is the price of the fish. I will tell them, maybe, 15 cents, 20 cents, whatever happens to be market price to my estimation. Well, if he is satisfied, if he has a small amount of fish, he might sell it to me. But if he has a large amount of fish he might not be satisfied and he goes down on the wharf, or maybe two or three buyers sometimes is present asking for some fish.

Q. (By Mr. Schwartz): Two or three buyers of what?

A. Two or three buyers present will be right by the same time I am there asking the captain same thing as I am asking him, and if he is not satisfied with what I offer him, he will go down the line and probably try to get more. [489] Sometimes they come back and sell me the fish; other times they don't come back, and first thing I know he goes out to some other market and pulls out the box and sells him the fish.

I ask him, "What is the matter you didn't sell me the fish?"

"Well, So-and-So paid me one cent more per pound," or "two cents more per pound."

Well, then I wait for the next boat to come in. I do likewise and go to him and ask him if he would sell me the fish, whatever he happens to have, if I need it that particular kind of fish. Well, sometimes some boats prefer to sell me fish than any other market; then other boats prefer to sell the fish to some other market; and other times I don't even have to go out on the wharf,—the fishermen will come to me, "Vinc, you want any fish?"

"What have you got?"

"We got halibut."

"All right. Bring me a box."

He comes in.

"How much fish do you have?"

"Oh, 350 pounds," for instance.

I say, "What is the price?"

Well, he tells me his own price. How he arrived at that he probably asked some other fishermen how much he sold [490] the fish, and he expects to get the same price as the other fellow.

On the large boats, when they come from Mexico, usually, they carry in 20 tons of fish, 25 or 30 sometimes, and customarily the man will come by the wharf and he will get up on the dock and say—come to me, or somebody else, whoever happens to be around—if fish is scarce we all look out for the fish to see who is going to get it first—then he will ask me or somebody else, whoever happens to be there, "What is the price of barracuda?" Well, a fellow will say, "How many you got?"

"Oh, got 20 tons."

If he would ask me that, I go right back to the office and call some of my customers, the large customers that I sell fish to, and see if I could sell them, see if there is any fish anywheres else, like San Diego, or Santa Monica, Newport Beach; these people that I contact, they will tell me the truth, as a rule, what they can be some place else, or there isn't any fish. Then I go back outside and tell the man, well, I would like to get a couple of ton of your fish at a certain price, whatever I happen to think will be right. Naturally, he goes down the line and asks somebody else what they will offer him for the fish, and customarily before he gets through he automatically gives the fish to every market. Maybe someone offers him 20 cents, the other offers him 19, [491] the other maybe 21. But usually the market that offers him 21 cents or 2 cents more than the other, means they will buy a box or two, maybe three, which is about a thousand pounds. And then

they come to the conclusion that instead of selling five tons at 22 cents, the fishermen will say, "Let's cut it down to 20 cents," themselves, they talk among themselves on the boat, then they say, "Let's cut it down to 20 cents, we may be able to sell a whole load." They customarily do that. Then they give it to each market. One market wants two tons, they give him two ton; if fish is scarce everybody wants to get as many as they can, and customarily they sell a whole load at 20 cents or 18 cents to all these different markets. In other words, they keep us down there as a customer, all the fishermen practically they figure we are their customers. They come in and they know they are going to sell the fish to us next time when they come in. When fish is scarce, again they give us, each one of us, a little fish. If it is three ton, they try to divide to everybody one box to keep everybody satisfied, so when fish is plentiful, in return, we will buy fish from them.

The Court: Let me ask a question. Are most of your sales made by the telephone?

The Witness: Yes, telephone and telegrams.

The Court: Most of your sales are to regular customers, is that right? [492]

The Witness: Yes, sir.

The Court: And made by phone and telegram?

The Witness: Yes, sir.

The Court: Is that true of the dealers up and down the wharf, or do you have salesmen out?

The Witness: Well, salesmen in San Francisco, my own firm, and the others, there is a couple of companies down there that they don't ship much fish outside, they truck it in Los Angeles, distribute it to the butchers, fish markets—

The Court: As a general rule are the fish mostly sold by phone?

The Witness: Majority to us, sold by telephone and telegram.

The Court: From day to day?

The Witness: Yes, sir.

Q. (By Mr. Schwartz): Mr. Vitalich, from what you say, I gather there are times when there are several dealers on the pier all bidding for fish, so that to that extent those dealers that are there know what the price is as to a particular catch of fish, is that correct?

A. That's right.

Mr. Margolis: I object to that—

Mr. Schwartz: I am leading up to-

Mr. Margolis: I move to strike the answer for the purpose of making an objection. I object to the question as [493] leading and suggestive, and stating facts not in evidence.

Mr. Schwartz: Your Honor, what I am trying to do here is recount so that I can get to another question.

The Court: The objection is overruled. It is obviously a preliminary question to another question.

Q. (By Mr. Schwartz): And then there is another method by which you dealers can learn what

the price up and down the line is when you say the fishermen will come in and say, "Well, So-and-So down the line has offered me 20, and you only offer me 18," is that correct?

A. That's right.

Mr. Margolis: Just a moment. I object to that as leading and suggestive.

Mr. Schwartz: It has been testified to.

Mr. Margolis: If it has been testified to, then I object to it on the ground that it has been asked and answered. If it hasn't been testified to, which I think not——

The Court: Is this preliminary?

Mr. Schwartz: Yes, sir.

Mr. Margolis: It is preliminary, but it goes to one of the very issues. If counsel can stand up here and say, "It is preliminary," and then simply testify for the witness, why have the witness on the stand? Let counsel be sworn.

Mr. Garrett: I have my standing objection, if your Honor please, incompetent, irrelevant and immaterial. I would like [494] to point out, if your Honor please, that this testimony could be relevant only in the nature of rebuttal. I would like to ask what part of the government's case in the main such testimony could possibly go to?

The Court: This testimony would appear to me to be material in showing the course of the fish business, and whether or not the fish business is restrained, or the alleged conspiracy had a tendency or purpose to restrain the interstate business of fish.

The question of counsel was not improper, but reviewed things that came out before, and obviously was preliminary, and the objection is overruled.

Mr. Margolis: I just want to state this one thing, your Honor: When we went into the question—

The Court: Counsel, if you will just state the objection instead of arguing them. I would like to have everybody adhere to that rule, if possible. If you have any further objection, just state the ground of it without any argument.

Mr. Margolis: Yes, I want to object to this; that on the theory of the government's case, shown by its objecting to our questions when we tried to show there was price fixing among the dealers, this is incompetent, irrelevant and immaterial.

The Court: Counsel, you are not stating your objection; [495] you are arguing your point.

The jury will disregard the statement just made by counsel.

Mr. Margolis: I don't know how I can point out my objection without stating——

The Court: There are certain grounds of objection, and you know what they are. It is either leading, suggestive, incompetent, irrelevant or immaterial, stating a fact not in evidence, and so forth. If you state them I will rule on them, if you have anything additional.

Mr. Margolis: The point I want to make is this: We thought originally that this whole subject was not incompetent, irrelevant and immaterial——

The Court: Counsel, again I must caution you not to make an argument.

Mr. Margolis: I will ask leave, then, your Honor——

The Court: If you will state your objection I will rule on it. Do you have any additional grounds of objection other than that already stated?

Mr. Margolis: I have stated it, but I want to ask leave to argue it either in the presence or absence of the jury, or approaching the bench.

The Court: If you approach the bench it has to be in the presence of the defendants. I have sufficient information to rule on it. [496]

If you do not have any further grounds of objection, the objection is overruled. The reporter will read the question.

Q. (By Mr. Schwartz): Other than those two methods by which any one dealer can determine what the other dealer or dealers are offering for a given amount of fish, is there any [497] other way that you have of determining what anybody up and down the line is offering for fish that day for the

A. The way I can learn what the other fellow pays, as I said before, we all stay there, two or three of us——

Q. (By Mr. Schwartz): Go ahead.

same species or other species?

A. Two or three happen to be there by the boat and naturally if I offer the price to the fishermen

at 20 cents the other buyers know it already. He was there present when I told him I will take two ton of fish at 20 cents a pound. Or the other way we could find out what the other fellow pays, a fisherman will say, go down the line and he will come back to me and say that so-and-so offered me 18 cents and you offered me 17 cents. I will say, "Maybe he is going to take from you a box or two of fish and maybe that is why he gives you more money."

"No," he says, "the other fellow offers me 18 cents and I want 18 cents for my fish too. If you want it, all right. If you don't want any, I will sell it to somebody else." That would be the answer ordinarily.

- Q. Now do any of these fishermen from whom you purchase fish work for you as employees?
 - A. No, sir.
 - Q. Do you have any interest in any vessels?
 - A. No, sir.
 - Q. As an employer?
 - A. No, sir. I did have one.
 - Q. How long ago?
- A. About three years ago. I had one boat with a [499] fisherman. He sold it to me and I sold it to somebody else.

The Court: These fishermen, do they fish with nets?

The Witness: Some of them.

The Court: Do you own any nets?

The Witness: No, sir.

- Q. (By Mr. Schwartz): Do you pay these fishermen wages? A. No, sir.
- Q. Now these transactions that you describe with the fishermen, are those the types of negotiations that result in a sale of fish? Is that the way you conduct your purchase of fish from fishermen?
 - A. Yes, sir.
- Q. Now I want to go on to your purchases of fish from outside of the state of California. Will you describe that operation?
- A. Well, we have brokers in San Pedro, which is Angelo Munsante, and the Seafood Brokerage Company, and we have several brokers in Los Angeles.

When Seafood Brokersage or Angelo Munsante brings in any fish in from Mexico, what they call bass, or totauwa, or shrimps, or any other fish, they will bring it in by truck, which would be a load of 5 ton, 8, 10 to 12 ton, sometimes small loads of 2 or 3 tons. He will bring it down to the wharf and he will say, we all walk up to this truck, practically [500] all of us to get some fish, fish is scarce particularly, and someone will ask Mr. Munsante, "How much is the price of your sea bass?"

He will say, "Twenty cents."

"Can I get some?"

"Sure."

The other fellow will ask him, "Can I get some?" "Sure."

And by the time he gets through unloading the fish he will give each one of us, maybe 300 or 400 pounds of fish. The ones that buy the most when fish is plentiful he probably will give them a little more as a better customer.

Likewise the Seafood Brokerage do the same thing. If a load of shrimps comes in which would consist of two or three ton, four ton, I would say, "Mr. Munsante, have you got any shrimps? I would like to get a couple of ton to get in storage for freezing."

- Q. Where does the shrimp come from?
- A. Mexico, on the truck.

And probably he will say, "Well, I got a couple of ton for you today and if you want some more I might give you another load within two or three days," which we usually deliver to the Union Ice and Cold Storage in Wilmington, and we freeze it, that is, the Union Ice and Cold Storage Company freezes it for us. Naturally we pay them for it.

The Court: When you say "us" whom do you mean?

The Witness: Our company. I don't want anybody to misunderstand me when I said "us." I mean our company.

Q. (By Mr. Schwartz): The Catalina Fish Company?

A. The Catalina Fish Company.

The Court: Is that the name of your company, Catalina Fish Company?

The Witness: Yes, sir.

- Q. (By Mr. Schwartz): Do you buy any fish from the state of Washington?
 - A. Very little.
 - Q. From what ports or what places?
 - A. Seattle.
 - Q. Any from Oregon?
- A. Very little up there. My business is mostly conducted from local fishermen.
- Q. Do you ship out of the state of California any of the fish which you purchase?
 - A. Yes, sir.
 - Q. To what states do you ship that fish or sell it?
- A. I ship to Oregon, Washington, Idaho, Utah, Colorado, a few times we ship in Wyoming.
- Q. How is the handling of the transportation of that fish taken care of? How is it shipped, in other words? [502]
- A. It is shipped by the Railway Express Company. Their trucks come down, back up against the wharf and put it on the truck and they transfer it to the P. E. car at San Pedro, and sometimes they bring great big trucks, those semi trucks and pick it up at the wharf and they bring it right to Los Angeles.
- Q. Is the fish which you ship out of the state in that manner generally fileted or is it in the same form in which you purchase it?

 A. No.
 - Q. Is it processed at all?
- A. We clean it, cut the heads off and take the insides out.
 - Q. And it is iced?
 - A. And it is iced, naturally.

The Court: Is it iced or frozen?

The Witness: Iced, most of the time. Shrimps is the only fish that our company freeze and occasionally we freeze some sea bass or small sardines which is used for bait. We ship to the northern part of California. I presume it is for striped bass bait which they fish in the river.

The Court: Sacramento River?

The Witness: I presume it is. We ship a lot of bait to Sacramento, Stockton, Oakland, San Francisco. [503]

Q. (By Mr. Schwartz): By the way, does your plant have capacity for storage of fish?

A. Yes.

Q. : About how much is that?

A: I got an icebox there, I could store about 15 original ton of fish, somewhere around there.

Q. Approximately how much, in terms of dollars, would the purchases of fish of your company amount to in any one normal year, say 1944?

Mr. Margolis: Objected to on the ground that it is not the best evidence.

Mr. Schwartz: I submit, your Honor-

The Court: Objection overruled.

Mr. Garrett: May I have the witness on voir dire?

The Court: No.

Mr. Garrett: If your Honor please, I think it is material at this point to bring out the fact, if it is a fact, that the Catalina Fish Company has books.

The Court: If he knows.

Mr. Garrett: We certainly have to have the best evidence as a basis for cross-examination, and if there are books that is the best evidence:

The Court: If he knows. The objection is overruled.

Mr. Garrett: I want my objection in the record at this [504] point. I didn't have a chance to get the objection in. It is objected to as not the best evidence on behalf of my defendant, and hearsay.

Mr. Garrett: And no foundation laid and calling for a conclusion of the witness.

The Court: Objection overruled.

* * *

Mr. Margolis: Just a moment. I want to make one additional objection, that it assumes facts not in evidence, that 1944 is a normal year.

Mr. Schwartz: Strike out the word "normal." 1944.

Mr. Margolis: Then I object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Garrett: I wish to make the same objections to the question as stated.

The Court: Objection overruled.

Q. (By Mr. Schwartz): Answer the question.

A. Well, I couldn't say exactly but I would say the [505] purchases will be in the neighborhood of \$150,000.

Q. What would you say the amount for 1945 was?

Mr. Margolis: Same objection.

The Court: Is that wharfside?

Mr. Schwartz: I am going to ask him that, your Honor.

The Court: All right.

Q. (By Mr. Schwartz): What would you say it is for 1945?

Mr. Garrett: Same objection.

The Court: Same ruling.

The Witness: In 1945 I would say it would be approximately between \$125,000 to \$130,000.

- Q. (By Mr. Schwartz): Do those purchases include the fish purchased at the wharf and the fish purchased from points outside of the wharfside?
 - A. That is total purchases.
- Q. Now during the course of the year do you purchase from the wharfside, from fishermen, more in some months than in others?

Mr. Garrett: Leading, of course. Objected to on that ground.

The Court: Overruled.

The Witness: Yes. We purchased—some months the fish is better than others. I would say during summer months we [506] buy more fish as fish is plentiful during, I will say, May, June, July and August.

Q. (By Mr. Schwartz): Mr. Vitalich, some time during the month of May 1946 were you presented by anyone with a form of contract called

the Southern California Market Fishermen's Master Agreement? A. Yes.

The Court: Which is identified here as exhibit? Mr. Schwartz: I am going to show it to him.

The Court: Isn't that the same as the other one?

Mr. Schwartz: Yes, sir.

The Court: Only for the purpose of the record.

Mr. Schwartz: I am about to do that.

Q. What is your answer?

A. Yes, I have.

Q. I show you Government's Exhibit No. 3, and ask you whether that is a copy of the agreement which you received at that time. [507]

* * *

A. Yes, sir.

Q. By whom was it presented to you?

A. It was presented to me by Mr. Zafran and two other men was with him.

- Q. Do you see any of those men in the courtroom at this time?
 - A. I won't recall who they were.
 - Q. Do you know Mr. Zafran?
 - A. Mr. Zafran, yes.
 - Q. Can you identify him?
 - A. Yes, the gentleman sitting over there.

Mr. Schwartz: Will you stand up?

(The defendant Zafran stood as requested.)

Q. (By Mr. Schwartz): Is that the man who presented the contract to you?

A. Yes, sir.

- Q. Now looking over the other defendants, do you see any of them who were with him at that time?

 A. I couldn't recall it.
 - Q. Do you know their names?
- A. No, I don't.
 - Q. Now on what date did that occur?
 - A. On the 20th of May.
 - Q.:: 1946? [508] A. 1946 is right.
- Q. What if anything did Mr. Zafran say to you at that time?

The Court: I think you had better fix a place.

- Q. (By Mr. Schwartz): Where did this take place?
- A. In San Pedro, California; Municipal Fish Wharf.
 - Q. Was it in your place of business?
 - A. Yes, sir.
- Q. Inside or outside?
 - A. I think it was right by the door.
- Q. What if anything did Mr. Zafran say to you at that time?

Los Angeles, California, March 21, 1947 10:00 o'Clock A.M.

* * *

Mr. Rubin: May it please the Court, before the jury is called at this time it becomes necessary to make a statement to the Court concerning the examination of the books which your Honor permitted last evening.

Your Honor will recall, and the record so indicates, at the time Government's Exhibit No. 6 was admitted into evidence, an objection was made that that was not the best evidence and that the best evidence was the original books from which those original compilations were made.

Your Honor at that time ordered that the books be brought in court for the purpose of affording the defendants an opportunity to examine them to test the accuracy of those compilations. I have the record references marked if your Honor chooses to read them.

The Court: I recall that that was my ruling.

Mr. Rubin: The books were sent upstairs—and your [521] Honor also will recall that it was indicated that a representative of the Government ment should be present during that examination.

The Court: That is right.

Mr. Rubin: The books were sent upstairs, Mr. Ross and Mr. Fuss were present, Mr. Fuss was afforded an office and was further afforded an electrical adding machine.

After the court session was over Mr. Margolis, Mr. Andersen and Mr. Kibre proceeded upstairs and they commenced to examine the books. Mr. Alexander of our office remained in the room for a short period of time, I remained in the room thereafter for a very short period of time, and then by agreement between counsel Mr. Ross was excused. Mr. Ross had been waiting and had partici-

pated in describing what was in the books so that Mr. Fuss could make the necessary check.

After Mr. Ross was excused, I returned to this office where the examination was occurring and after observing information taken from the books which, in my opinion, were beyond the scope and purpose of the production of those records, I stated to those present whom I have named that in my opinion the purpose of that examination was solely to test the accuracy of Government's Exhibit No. 6 and for no other purpose, and Mr. Margolis stated that they would use those books for any purpose of their case.

I stated that he would no such thing, and he said, "Well, the only way you can stop us is to call a couple of cops." I left the room at that time. I didn't bother them for an additional period of time.

Shortly prior to 6:00 o'clock I went back in and they were obtaining information concerning species of fish, names from the books and dates of purchases, and again I remonstrated that that was not the purpose for which the books were submitted to their examination under the Court's ruling, and again asked them to cease. And they said that they would proceed.

I then prepared a written statement, which I desired to read to them, after which I asked Lieutenant Franz, the guard on duty in charge of this building, to come upstairs so that he would be present during the reading of this statement to these gentlemen. And he did come up.

I then called the four men—I believe they were then in the outer office—and I read to them the following statement:

"My understanding of the order of court with reference to Mr. Ross' books is that you may examine them to test the accuracy of Government's Exhibit No. 6. You have informed me that you will use the books for any purpose of your case. You are now asked whether you are taking any information from the books other than the figures, [523] the totals of which are represented by the compilations set forth in Government's Exhibit No. 6, and if so you are asked to not examine the books further and to leave them until court convenes tomorrow."

I am trying to eliminate the acrimony in this conversation. It may not shed any light upon the issue here.

Mr. Margolis stated that I had no right to order them as to any method of proof, and I stated that I felt my obligation was to see that the Court's order in so far as I understood it was to be carried out.

Mr. Andersen then stated that I was entitled to no further statement from them other than that which they had given, and Mr. Margolis asked if they could go back and examine the books, and I said "only for that purpose."

After other conversations these gentlemen left. This occurred at 6:00 o'clock last night. The books are now here. Mr. Ross is present. I have the

record and at this time, if your Honor please, I ask the Court's instruction in the matter. [524]

Mr. Margolis: May I be heard, your Honor? The Court: Yes.

Mr. Margolis: The statement made by counsel is partially accurate and partially inaccurate; inaccurate in large part in what it omits.

Mr. Rubin came into the office where we were working and asked if we were doing anything more than adding up those figures which were represented by the totals in People's Exhibit 6. We said that we were, but that we would not tell him what we were doing, and that we did not have to tell him what we were doing, and that we were not subject to the supervision of Mr. Rubin as to the manner in which we inspected the books.

The information which we were taking from the books consisted of species of fish, pounds, and prices. It did consist of more than simply adding the totals which were shown opposite the bills of lading. It did not consist of taking the names—although I think we would have had the right to take that too—it did not consist of taking the names of any fishermen or any of the customers. We insisted again and again that we had a right to examine those books——

The Court: What was that? It did not consist of what? Read it.

(The record was read.) [525]

Mr. Margolis: (Continuing): ——in any manner that we wanted to for the purpose of cross-examining Mr. Ross with respect to them.

We told Mr. Rubin that we did not think we had to advise him in advance of the subject-matter of our cross-examination, or of the manner in which we were going to conduct our cross-examination.

Our position, very simply, is this, your Honor:

First. We are prepared to tell the court precisely what we were doing and the purpose for which we were doing it. We are not prepared, unless otherwise directed by the court, prior to the cross-examination, to reveal to the government the purpose for which we were gathering those figures. We feel that we have no obligation to advise the government in advance of exactly how our cross-examination is going to be conducted, although we have no objection to informing the court as to how our cross-examination is going to be conducted.

Second. As to our understanding of the law. The best evidence in this situation is the books themselves. Ordinarily, except for a modification of the best evidence rule, the books themselves would be required to be in evidence, and if the books were in evidence then we could utilize those books for any purpose material to the case, whether helpful to us or helpful to the theory of the prosecution. Under [526] the rule a summary may go into evidence not for the purpose of taking away from us the right which we would have if the books were in evidence to utilize those books for any purpose for which they were material, but simply for the purpose of preventing the record—from getting all of these books in the record and taking the books away from the business and preventing the business from

carrying on its ordinary operation, its means of going ahead. In other words, the rule permitting summaries is a rule of convenience and necessity, not a rule which is intended to deprive the party against whom the evidence is offered of all the advantages which would exist if the best evidence had been offered; and if the best evidence had been offered in this case, the books, I submit that we would have the right to cross-examine this witness with reference to anything which those books showed, which was material, and that the government could not limit its offer in those cases to prove its own point and say, "You can't prove anything by those books because we offered it only to prove our point."

If evidence goes in, unless limited by the court, it goes in for all purposes. The summary being merely a summary of what is in the books it is, in effect, as if the books had gone in, as far as our right to examine the books is concerned and to cross-examine the witness on the basis thereof.

We have in mind in preparing this information, collating [527] this data—as I said, I have no objection to telling the court specifically what it was —preparation of material upon the basis of which to cross-examine Mr. Ross.

Those are the facts.

The Court: The original exhibit and testimony of the witness Ross with relation to the amount of business that he did was material in connection with the necessary element of the charge that this was a

restraint upon commerce among the states. Whether it restrained it one barracuda less or more is immaterial, if there was a substantial restraint.

I think that I was under no compulsion, as a matter of law, under Section 695, to permit the examination of the books. I think that the exhibit, under the testimony and foundation laid by the witness Ross that they were taken from his books kept in the regular course of business, under that section would have permitted and required me to admit that document, Exhibit 6, without any examination of the books.

Maybe I could be pardoned for saying that I did not look with favor, as a lawyer, upon the enactment of the statute Section 695.

That is the law, and I must follow it. I have rather felt that at least a reasonable opportunity should be extended to some one to test the verity of figures that are put in tables and taken from books and summaries, and for that reason in the exercise of what I thought was some [528] discretion I made the order that these books should be made available for the defendants here to examine them for the purpose of cross-examining the witness Ross and testing his verity. I can't see any other materiality in that connection of the books. [529]

Mr. Margolis: How can that matter be determined, Your Honor, until such time as we put the questions and also are we limited—may I ask this—are we limited to presenting this matter by simply adding these figures? There are other ways of testing the veracity of those figures, and if I am forced

to reveal the method that we wanted to use, I shall do so. I prefer not to do so. I don't want to put the Government on notice, and Mr. Ross on notice, of what the basis of our cross examination is going to be, but I say that there is more than simply the adding of the figures as a means of testing the veracity of this particular exhibit, and I don't see how Mr. Rubin, and with all due respect, I cannot see how the Court, can determine the materiality of the questions that we are going to ask until we ask them.

The Court: I had not given any indication that would justify the remarks which you have just made of any anticipatory ruling. I have tried to outline the reason why I think the document is material and why the information contained in it is material, and why I permitted the defendants here to have an examination of the witness' books. This isn't a contest between Ross and these defendants here at all. If it were, Ross should be here with all of his books all the time. And if there is a mistake in the addition of figures—in other words, if there is some variance—I don't know how that would be material because the material thing is whether [530] or not commerce was affected, the commerce in fishing was affected, by the alleged conspiracy as set forth in the indictment.

In any event, I do not see any necessity for saying anything more at this time and I think that we are going to have to spend a little bit more time trying the law suit than listening to arguments in the future than we have in the past.

Mr. Margolis: Well, at this time, your Honor, we are going to ask leave to continue our examination of the books without supervision on the part of the Government as to the method which we use in devising our cross-examination.

The Court: I do not believe that you should be allowed, and I do not think it would be just or fair or right to the witness Ross, to permit his books here to be subjected to a complete audit and inspection and investigation of the privacy of his business. The question is whether or not the commerce in fish was affected. He was put on for that purpose.

Now Ross doesn't do all the fish business in the state of California, and I suppose that there will be cumulative evidence in that respect, but I am not going to permit a fishing expedition into Ross' business in order to enable the defendants to cross-examine the witness Ross as to one exhibit.

Mr. Margolis: Your Honor please, I want to say, to assume that we are engaged in a fishing expedition is unfair.

The Court: I did not assume that, I said I am not going [531] to permit it.

Mr. Margolis: We do not have any intention of engaging in a fishing expedition. At the same time, we either have to be permitted to examine these books or——

The Court: Mr. Fuss is an auditor, is he?

Mr. Margolis: No, he is not an auditor.

The Court: What is he?

Mr. Margolis: He is a research man. The Court: He is a research man?

Mr. Margolis: That is right. He is familiar with books, however.

The Court: He is familiar with books, and he had from—it was about 4:00 o'clock yesterday afternoon until 6:00, is that correct?

Mr. Margolis: From 5:00 to 6:00 was spent in arguing.

Mr. Rubin: I beg your pardon. I would say about 10 minutes was.

The Court: Well, it was from 4:00 to 6:00. I think that was ample time for a man familiar with books to examine those books to conduct an examination concerning Exhibit No. 6.

Mr. Margolis: In order that the record may be complete, your Honor, I want to state that it was a physical impossibility to complete the examination within that time, and I am going to state now what we were doing. I am doing this because I see this is the only way that I can protect the record and I am going to have to reveal what my cross-examination was going to be.

Your Honor will recall that one of the questions that was asked Mr. Ross on cross-examination was how he explained that there was so small a difference between the amount which he paid for the fish and the gross which he received for the fish.

The Court: I do not think so.

Mr. Margolis: If I may finish?

The Court: I know, but let us get our facts right.

Mr. Margolis: As small as there was.

The Court: No, there wasn't anything said about small or large.

Mr. Margolis: The amount of the difference, your Honor. The amount of the difference ran to about, I would say, roughly 40 per cent. I may be off a little bit on the percentage.

A quick examination of the books—and I am not prepared to say that we have completed that examination or have arrived at any definite conclusion; we didn't have an opportunity to do that—a quick examination indicated that the price differential between what was paid and what was received ran about 100 per cent, and that a difference of about 40 per cent was simply inconsistent. We were therefore listing buying prices and comparing them with selling prices for [533] the purpose of seeing whether that differential which was shown to exist on there was at all consistent with his comparative buying and selling prices. Now I didn't want—

The Court: What difference does it make what profit he makes?

Mr. Margolis: Because, if your Honor please, if he was selling at a hundred per cent mark-up and the sum total shows only a 40 per cent mark-up, then there is something wrong with the figures. That is quite obvious. If a man sells his fish, keeps selling an item at a hundred per cent mark-up, then at the end of the year the total sales are only 40 per cent in excess of the total amount paid up, there is an error some place, either an error or a misrepresentation.

I don't want to say at this point that Mr. Ross has made an error or a misrepresentation. I am not prepared to say that. But I am prepared to say

that we had some indications that one of those two things had occurred, not enough yet to arrive at a conclusion.

The Court: It seems to me that that is immaterial. The figures are there. What his profit was is immaterial, and this lawsuit, as far as I can see—

Mr. Margolis: Mr. Ross himself told us while we were there that it took his girl three days to prepare the figures and we are given a sum total of, even accepting Mr. Rubin's statement as true, which I don't, two hours. [534]

If your Honor wants sworn testimony that Mr. Ross stated that it would take three days, that it took his girl three days, to prepare those figures we are prepared to give that sworn statement.

The Court: Call the jury down.

Mr. Garrett: May I be heard before you call the jury? I want to make a statment.

The Court: What about?

Mr. Garrett: I want to say, your Honor, that while I wasn't personally present at the incidents last night, I want the record to show that my position is the same as that of the other defendants as expressed by Mr. Margolis.

I have also, by way of observation, just two points to mention, and that is this: Unless I misconceive—I want to say, first, that I also distrust, I want to say flatly I distrust personally the figures submitted by Mr. Ross in the memorandum almost in their entirety for reasons which I think I have properly inferred from evidence given by Mr. Ross—I also want to say that unless I misread the Apex case I think that the extent of the interference with inter-

state commerce may be material in an adjudication of the case. We cannot speculate as to what future evidence may be given, we on the defense side at least, and as the evidence now stands the evidence of the memorandum adduced by Mr. Ross is the only evidence in the record which would indicate if interference with [535] interstate commerce occurred.

The Court: I appreciate that in the Apex case the Supreme Court said, because their hosiery didn't get into commerce that it didn't make it affect interstate commerce. As I see that document, the only thing that is material about it is that during the period here when they started to effectuate the conspiracy there was no fish moving into commerce. Otherwise I cannot see any materiality on whether he sold 8 million pounds of barracuda, or something else, 11 months before, or only 7 million pounds or only 3 million pounds or only 1 million pounds. It was the fact that the object of the conspiracy was intended to, and did, affect and restrain the commerce in fish.

Mr. Garrett: Might I be permitted to ask if your Honor would think it proper to add the words "and to what extent." If those words may properly be added——

The Court: Yes, and to what extent. But certainly to the extent of going into the books of this one witness, who is one dealer in fish, where assuming that his figures are anywhere near accurate, his total amount of fish bought in the year—what was it—somebody made the statement here, or it is in the indictment, that there was 20 million pounds. Here is 1,550,000 pounds of fish, is that right?

Mr. Rubin: One million pounds from outside of the state, if your Honor please, and about 20 million pounds in [536] this area over the seaward side.

Mr. Garrett: I have a little more to say on that point.

I would like to refer to something that I was ready to present to your Honor yesterday.

Mr. Margolis: If you have finished on that point, may I just have a minute?

Mr. Garrett: I will be through in just a second. Mr. Margolis: Just so the record will be clear.

I want to ask leave at this time so that the record will be clear to present evidence in support of our position as to what happened yesterday, the statements of Mr. Ross as to how long it would take to examine those books, precisely what we were doing with respect to those books, so that there will be no question that the representation made——

The Court: No one has challenged your statement.

Mr. Margolis: I beg your pardon?

The Court: No one has challenged the veracity of your statement.

Mr. Margolis: The Statement then I assume is accepted as true for the purpose of your Honor's ruling?

The Court: Whatever this is.

Mr. Margolis: Then I ask for a ruling on my request that we be allowed to examine the books without further supervision.

The Court: The request is denied.

Mr. Margolis: May I make a request that we be permitted to continue to examine the books for the purpose of further checking the figures first and, second, for the purpose of comparing the purchase price and sales price of the various types of fish as shown by the books of Mr. Ross?

The Court: Your request is denied.

* * *

Mr. Magolis: I move to strike out Government's Exhibit 6 from the record.

The Court: The motion is denied.

Mr. Margolis: At this time I move to strike all of the testimony of Mr. Ross with respect to Government's Exhibit No. 6.

The Court: The motion is denied.

* * *

Mr. Magolis: And with respect to the amount of fish receive by him, purchased by him, where it was purchased, how it was purchased, with respect to the amount of fish sold by him, and where it was sold, the amounts for which sold, that that be also stricken from the record. [539]

The Court: Well, I will presently adhere to my ruling and we will proceed.

I want to say again that I think that the materiality of this document is that it shows the flow of fish as far as this one merchant is concerned, and whether it is a few pounds or anything other than a very material amount in pounds [541] or dollars to me is immaterial.

About the only value that I can see that this chart has in evidence could have been formed by

what the research men and statisticians call an extrapolation of figures. In other words, a chart would have performed practically the same thing based upon his figures.

Call the jury down.

Has somebody else got something else to say?

Mr. Rubin: May I inquire of counsel if they propose any further cross-examination of Mr. Ross so that we might know whether to excuse him?

Mr. Andersen: We have been deprived of the right to cross-examine him.

The Court: You have not been deprived of the right of anything, Mr. Andersen, and I don't like your repeated implications contained in your remarks that this court is depriving you of something you have the right to.

Mr. Margolis: We have been deprived of something which in our opinion we have a right to, and which we think the law gives us the right to, and I think we have the right to state that for the record.

The Court: I don't think you have a right to state that, and I don't think you have a right to insinuate that, [542] especially in front of the jury.

Mr. Andersen: The jury isn't here, your Honor.

The Court: I know the jury isn't here, but I am taking the occasion to remark on it because this isn't the first time that has occurred. Under orderly procedure the responsibility is mine to determine how evidence shall go in.

Do you wish further cross-examination of Ross or not?

Mr. Margolis: We want the record to show this, your Honor; we do wish further to examine Mr. Ross; because of the court's ruling with regard to the examination of the books were are unable to cross-examine him any further.

* * *

The Court: All right. Mr. Ross may be excused, then.

Do you have any further questions of him?

Mr. Rubin: No. May he take his books with him?

The Court: He may be excused and take his books.

Call the jury down. There was a witness on the stand, was there not?

Mr. Schwartz: Yes; Mr. Vitalich.

(the following proceedings were had in the presence of the jury:) [543]

VINCENT VITALICH

Resumes the stand on direct examination.

Q. (By Mr. Schwartz): When we adjourned yesterday I was asking you, Mr. Vitalich, about this Government's Exhibit No. 3, the Southern California Market Fishermen's Master Agreement. I believe you stated that Mr. Zafran and some others brought it in to you. What was said by Mr. Zafran at the time this Exhibit 3 was handed to you?

The Court: Has that date been fixed?

Mr. Schwartz: I don't recall, but I will ask him.

- Q. (By Mr. Schwartz): What was the date?
- A. 20th of May.
- Q. May 20th? A. Yes, [544]

- Q. 1946? A. 1946, yes, sir.
- Q. At what time of the day?
- A. I can't recall it.
- Q. All right. What was said by Mr. Zafran to you at the time this contract was presented to you?
 - A. Mr. Zafran—
 - Q. Keep your voice up; I can't hear you.
- A. Mr. Zafran handed me the contract, and I says, "What is this for?"

He says, "The fish contract from the fishermen."

And I says, "What is all about it?"

He says, "Well, read it and sign it. I will pick it up."

- Q. What did you say?
- A. I just took the contract and I said, "All right, I will read it."
 - Q. Was that the end of the conversation?
 - A. That's right.
- Q. Were you present at your place of business at this wharf the morning of May 29, 1946?
- A. I may have been there; I may not. I can't recall if I been there or not.
- Q. Do you recall seeing any men around your place of business walking around with placards?

Mr. Margolis: Objected to on the ground it is incompetent—— [545] A. Yes.

The Court: Well, it is leading.

Q. (By Mr. Schwartz): Do you recall anything unusual at your place of business on or about the 29th of May, 1946?

* * *

"Q. Do you recall anything unusual at your place of business on or about the 29th of May, 1946?"

The Witness: Yes.

Q. (By Mr. Schwartz): Will you state what that is?

Mr. Margolis: Same objection.

The Court: Same ruling.

* * *

A. I came down at the place of business and I discovered there was a bunch of men walking up and down in front of our place——

* * *

A. (Continuing): ——with the placards in their hand, walking up and down. And we were told they were picketing fish markets.

Q. I didn't get the last.

A. We were told they were going to picket the fish markets.

Mr. Margolis: Just a moment. I move to strike the entire answer on the ground that it is incompetent, irrelevant and immaterial, has no relation to any issue in this case; the last part of the answer starting with the words, "we were told that" on the ground that it is hearsay.

* * *

The Court: Well, the last part may be stricken; otherwise [547] the objection is overruled, the motion to strike denied.

Q. (By Mr. Schwartz): I show you Government's Exhibit No. 1, and ask you whether you saw the people walking around as is portrayed in the exhibit.

Mr. Margolis: May we have a general objection—

Mr. Schwartz: Just a minute.

Q. (By Mr. Schwartz): ——as you have just described in your previous answer?

Mr. Margolis: May we have a general objection to this line of questioning?

The Court: Surely. It will be deemed that the defendants have objected to each and every question on the grounds heretofore indicated concerning this line of testimony from this witness, and the objection is overruled.

Q. (By Mr. Schwartz): Go ahead, Mr. Vitalieh.

A. Yes, I saw men walking up and down with similar placards, and I won't swear it was all these men the same day, some of these faces were familiar either that day or for about a month.

Q. For about a month?

A. For about a month. I saw these men either one day one group, maybe next day there would be another group; but these faces are familiar, some of them I recognize that I saw them at the place at the strike.

Q. Were any of the defendants engaged in walking up [548] and down as you have just described with placards during this month of June, 1946?

A. You mean the men in the court room?

- Q. The men in the court room. A. Yes.
- Q. How many do you recognize?
- A. I recognize Tom Sawyer and a man by the name of Chris Kennison—
- Q. May we have the gentleman who he is referring to stand up, your Honor?

(The defendants Sawyer and Kennison stood.)

The Witness: I believe I saw George Knowlton there.

The Court: Mr. Knowlton.

(The defendant Knowlton stood.)

The Witness: I saw a man by the name of Bunny Smith.

The Court: Mr. Smith?

The Witness: He is not here.

The Court: Mr. Smith is not here? (The defendant Smith stood.)

The Witness: Not F. R. Smith, Bunny Smith.

The Court: Not this Mr. Smith?

The Witness: No.

I think that is all I can recall.

- Q. (By Mr. Schwartz): Were these men walking up and down as you have described on the pier side or the truck side, the landward side?
 - A. On the truck side.
 - Q. Now, I show you Government's Exhibit 2-

The Court: You are not suggesting that these men were [550] walking up and down on the water side, are you?

Mr. Schwartz: There are two piers, the dock side and the sea side.

The Court: I understood there was only the sea side and the land side.

- Q. (By Mr. Schwartz): I show you Government's Exhibit 2 and ask you whether you saw the situation as it is portrayed in that picture.
 - A. Yes.
- Q. Do you recall what day that was or what date?
- A. It was about the first or second day after we discovered there were pickets on the truck side, and about the first or second day I saw this boat with an "unfair" sign on top.
- Q. Now directing your attention to that boat you have just referred to having a sign on the fore part of the ship, how long did you continue to observe that vessel in that area there?
 - A. I don't remember how long they stood there.
 - Q. Approximately.
 - A. I don't remember how long they stood there.

The Court: It isn't there yet, is it?

The Witness: No, not there any more.

The Court: Can you give us some idea then?

The Witness: Well, approximately I saw them three or four different times, and I didn't come down to the fish market every day after I knowed that I couldn't receive any fish.

Mr. Margolis: Just a moment. I move to strike that "I could not receive any more fish" as not responsive.

The Court: It may be stricken as a conclusion of the witness, that portion of the answer.

- Q. (By Mr. Schwartz): Now, during the month of June 1946 did you see this boat bearing this placard on the fore part of it out in the area in front of the Municipal Fish Wharf?
 - A. Yes, sir.

* * *

- Q. During the month of June, Mr. Vitalich, did you purchase any fish from fishermen on the sea side of your establishment? A. No, sir.
- Q. When did you make your first purchase again from fishermen, any quantities of fish after the occurrences which [552] you have just related, on or about what date?
 - A. On the 1st of July.
 - Q. On what? A. First of July.
- Q. During the month of June 1946 did you receive any deliveries of fish from points outside of the state of California at your place of business?
 - A. No, sir. I was closed entirely.
 - Q. You were what?
 - A. I was closed entirely.
 - Q. Your business was closed entirely?
 - A. Yes, sir.

* * *

- Q. During the month of June 1946 did you ship from your place of business by truck or otherwise from the land side any fish?
- A. No, I didn't ship any but I took my truck and went to the Union Ice——

- Q. I am coming to that. My question related strictly to your place of business. Did you ship any fish from your place of business by truck during the month of June 1946? [553] A. No, sir.
- Q. Did you conduct any fish business at all during the month of June 1946?
- A. I made one sale. I took my own truck and went to the Union Ice & Cold Storage Company in Wilmington and picked up, I think it was, 2000 pounds of fish, in that neighborhood, and delivered it to Los Angeles. That was the only sale I made during that month.
 - Q. Do you recall about when that was?
 - A. No, I can't recall it.
- Q. Where had that fish at the Union Ice Company that you just referred to come from?
 - A. We put it there in storage ourselves.
 - Q. Where had it come from?
 - A. My company.
 - Q. It came from your plant?
- A. From my plant. We put it in the Union Ice & Cold Storage Company.
 - Q. Why did you do that?
 - Mr. Margolis: Just a moment.
 - Mr. Garrett: Objected to as immaterial.
- Mr. Schwartz: There may be some relevancy. I didn't know about this either.

The Court: He testified yesterday that he had a Union Ice storage and then he bought fish and put it in storage in [554] his course of business.

Mr. Schwartz: As I understand it, your Honor, he testified that he has an icebox——

The Court: He has an icebox in his place. Do you in the course of business rent storage space?

The Witness: We pay the Union Ice and Storage for freezing and keeping our fish and after that we pay so much each month.

Q. (By Mr. Schwartz): For doing what?

A. We pay so much each month to the Union Ice & Storage Company to keep our fish there after it is frozen.

Q. At their place or your place?

A. At their place.

The Court: In other words, you keep at your place iced——

The Witness: Iced.

The Court: And you keep fish frozen at their place?

The Witness: Frozen fish we keep at the Union Ice & Storage Company.

The Court: From both of which you sell to your customers?

The Witness: That is right.

- Q. (By Mr. Schwartz): By the way, is the Catalina Fish Company a corporation [555] or a copartnership?

 A. It is a copartnership.
 - Q. What is your relationship to the company?
 - A. Manager.
- Q. What is the extent of your interest in the company? A. Half.

Q. Are you familiar with the amount of business which your company engages in shipping or purchasing fish from out of the state of California or to points out of the state of California?

Mr. Schwartz: Yes.

The Court: Do you know?

The Witness: No, I don't know exactly.

The Court: Generally.

The Witness: We don't buy very much out of the state of California.

- Q. (By Mr. Schwartz): Do you ship fish to points out of the state of California?
 - A. Yes, we do.
- Q. Do you know approximately what percentage of your business is represented in that particular category?

A. No, I don't know exactly.

Q. Do you know approximately what percentage it would be? [557]

The Court: Do you know how much?

The Witness: No, I don't know exactly.

The Court: Well, approximately.

The Witness: I would say——

- Q. (By Mr. Schwartz): Just say yes or no. Do you know approximately? A. Yes.
- Q. Now my question is, what is that percentage? Mr. Garrett: Just a minute. May I take the witness on voir dire?

The Court: Yes.

Voir Dire Examination

* * *

- Q. Have you got a bookkeeper?
- A. Yes, sir.
- Q. What is his name? A. What?
- Q. What is the name of the bookkeeper?
- A. At the present Mrs. Terrill.
- Q. Was Mrs. Terrill keeping your books in 1946 too?
- A. I believe she did, yes. She came in in the last part of 1946, last part of the year.
- Q. Who was your bookkeeper at the time of this trouble in 1946 in the summer, midsummer, June and July?
- A. I believe it was a lady by the name of Voorhees.
- Q. What were her duties when she worked for you?
 - A. She kept the books for us; bookkeeping.
 - Q. Full time job, was it? A. Yes, sir.
- Q. Down there at the wharf, do you handle all the money that is paid out to the fishermen for fish?
 - A. What?
- Q. Do you handle the money down there through the office? [562] A. Yes, sir.
- Q. You handle all the money that comes in through that office too?

 A. Yes, sir.
- Q. And then when money is paid out why you put it in these books that these bookkeepers keep, is that right?

 A. They keep the records.

- Q. When money comes in from your customers that goes into these books too, is that right?
 - A. Correct.
- Q. You don't keep them yourself, you hire somebody to do it, is that right? A. Right.
 - Q. First Mrs. Terrill and then Mrs. Voorhees?
- A. Then another lady came in for a couple of weeks, and we weren't satisfied with her so we hired this Mrs. Terrill.
- Q. Anyhow, you don't do the bookkeeping yourself, is that right? A. No, sir.
 - Q. And never have done it yourself, have you?
 - A. No, I don't keep the books.
 - Q. You are no bookkeeper, are you?
 - A. No, sir. I understand the books, though.
 - Q. Neither is Mr. Mericovich? [563]
 - A. No, sir.
- Q. All right. Those books you have been talking about are the regular books of the partnership, are they?

 A. Yes, sir.
- Q. You don't keep any other sets of books, do you? A. No, sir.
- Q. Just that one set of books that is down there at the wharf, is that right? A. Correct.
 - Q. And is that set of books there right now?
 - A. Yes.
- Q. And is that set of books the same set of books you were using in the summer of 1946?
- A. Yes, sir, all except the records that I brought upstairs.

- Q. All except the records you brought upstairs?
- A. Yes.
- Q. Did you make a selection of your records and bring it upstairs?

 A. My bookkeeper did.

The Court: I do not think that this goes to voir dire, counsel.

Mr. Garrett: It puts the original records a little closer to the courtroom than San Pedro, your Honor.

The Court: I do not think it goes to voir dire or his [564] competency to testify on this question or his knowledge.

Mr. Garrett: I have no further questions on voir dire, your Honor.

Wait a minute. Just one further question, if I may.

The Court: Surely.

- Q. (By Mr. Garrett): Those books you say that were taken upstairs, were they taken to the offices of these gentlemen seated here representing the Government, that is, the Antitrust Division of the Department of Justice?
 - A. I took it upstairs in their office.
 - Q. What office? A. On the 16th floor.
- Q. Is that the office of these gentlemen who are sitting here representing the Government?
 - A. I believe it is.

Mr. Garrett: No further questions on voir dire.

The Court: Proceed.

Direct Examination (Continued)

Mr. Schwartz: I think we had a question propounded to the witness.

Mr. Garrett: I have to object now if there is a question before the witness. If there are no further questions on voir dire, I am going to object.

(The record referred to was read by the reporter, as [565] follows:

("Q. Just say yes or no. Do you know approximately?

("A. Yes.

("Q. Now my questions is, what is that percentage?")

The Court: Percentage of what?

Mr. Schwartz: Business.

The Court: Fish that he sold outside of the state of California?

Mr. Schwartz: Yes.

Mr. Garrett: I object to that as calling for hearsay, not the best evidence.

The Court: Mr. Vitalich, at the end of the year do you go over your books at any time to find out how much business you do?

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. Margolis: Your Honor please, at this time before the question is answered we ask that the

witness be ordered to bring in his books upon which the answer is based so that we may examine the books prior to cross-examining this witness.

Mr. Garrett: I join in that request, particularly on the basis of the last case I handed up to your Honor.

Mr. Schwartz: And we object to the request by counsel on the ground that the witness has stated the course of his business. He states he knows how much business he does. We [566] do not see that the records are necessary except to prolong this trial.

The Court: The motion is denied. The objection is overruled. You can answer the question. [567]

- Q. (By Mr. Schwartz): What is the answer to that percentage question on sales out of the state of California?
 - A. In what year?
 - Q. Let's begin with 1945.
- A. In 1945 my percentage out of state, I would say, would be about 10 per cent.

Mr. Margolis: Just a moment. I move to strike the answer on the ground that the effect of the Court's ruling, stating that we cannot have the books, would deprive us of any opportunity to cross examine this witness at all.

The Court: Objection overruled. Motion denied.

Q. (By Mr. Schwartz): What about 1946, Mr. Vitalich?

Mr. Margolis: May we have a standing objection and a [568] standing motion to strike?

The Court: That is correct, to each question along this line. I thought that that was understood some time ago, but if not it will be so understood now without repeating the objection each time.

- Q. (By Mr. Schwartz): What about 1946, what percentage of your sales was fish shipped out of California?
- A. I can't recall it. If you gentlemen want to come to my office and I open up the books for you, I can tell you exactly what I got.
- Q. Will you give us an approximation? We are trying to save some time.
 - A. I know the books when I look at them.
- Q. Can you recall, or do you know approximately, what that percentage is?

Mr. Margolis: Just a moment. Objected to on the ground that that question has been asked and answered. The witness has said that the books show that it is and he doesn't know.

The Court: The witness says that he doesn't remember. That is the effect of his answer.

- Q. (By Mr. Swartz): Did you ever sign this contract, Government's Exhibit No. 3?
 - A. No, sir. [569]
- Q. Are you under subpoena here by the Government? A. Yes, sir.

Mr. Schwartz: That is all. [570]

Cross-Examination

By Mr. Garrett:

Q. Mr. Vitalich, what records did you bring up here?

Mr. Schwartz: I object to any further reference to records, your Honor, as being incompetent and immaterial.

The Court: Objection sustained.

Q. (By Mr. Garrett): What period was covered by the records you brought up here?

Mr. Schwartz: I object to any reference to records. I thought your Honor ruled on that.

The Court: Objection sustained.

Mr. Garrett: Am I to understand by your Honor's ruling that I am foreclosed from any inquiry whatever concerning the [571] records brought by this witness to the Department of Justice in connection with this case?

The Court: Yes, I think so.

Mr. Garrett: Is my understanding correct, if your Honor please?

The Court: Yes, that's right.

- Q. (By Mr. Garrett): Was there anything more to that first conversation with Zafran that you testified to on direct than what you told the government's attorney?
 - A. What is that?
- Q. You said that Zafran asked you to sign the agreement, and that you said you would read it.
 - A. Yes.

- Q. On the occasion of that conversation when the agreement was first presented, do you recall that testimony?
 - A. Yes, sir.
- Q. Who else was there besides you and Mr. Zafran,—anybody whose name you know?
- A. There was two other men with them, but I don't know the names.
- Q. Did either of them say anything that you remember?
 - A. No, I don't remember.
- Q. Was there anyone there with you, anyone that worked for you there in the office?
 - A. I don't remember anyone being there. [572]
 - Q. Your partner wasn't there, I take it?
 - A. I don't recall it.
- Q. Do you recall anything else that was said by anyone in that conversation?
 - A. Not except Mr. Zafran.

* * *

- Q. (By Mr. Garrett): Do you recall anything else that was said by either you or Mr. Zafran in that conversation which you haven't already mentioned?
- A. No; I already mentioned everything that was said.
- Q. You told us everything that was said in that conversation as far as you can remember?
 - A. As far as I can remember, yes, sir.

- Q. Let's see, you testified that you closed your business during the month of June, is that right?
 - A. Right.
- Q. Were you down there at the wharf at all during the month of June?
 - A. Yes, I was.

* * *

- Q. (By Mr. Garrett): And you testified you opened again July 1st, is that right?
 - A. Right. [573]
- Q. (By Mr. Garrett): You were in the meeting down at the wharf on June 10th, were you not?

Mr. Schwartz: I object to that on the ground it is improper cross examination, not having been gone into on direct.

The Court: Sustained.

Q. (By Mr. Garrett): You were at a meeting down on the wharf on June 11th, 1946, were you not?

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling; objection sustained.

Mr. Garrett: I take it by your Honor's ruling that I will be precluded from going into any meetings with this witness which he attended during the month of June, 1946?

The Court: The reason for sustaining the objection was because none of those meetings were covered in the direct examination of this witness, and as I indicated yesterday [577] the party producing the witness has a right to limit their cross examination by the questions they ask on direct

examination; and counsel is well aware of the means available, at law, to secure testimony from this witness if they desire other than on cross examination.

* * *

The Court: The only conversation—there was no meeting testified to on direct except the one meeting with Zafran, that is all, and any other meetings besides that were not opened on direct examination, and, therefore, under the rules if you are precluded from going into them on cross examination.

* * *

- Q. (By Mr. Garrett): I think you testified you were buying fish prior to June, 1946, Mr. Vitalich, is that correct? A. Yes, sir.
- Q. You were buying fish on that wharf for 10 years [578] prior to that time, were you not?
 - A. About 10 years; 13 years, I believe.
 - Q. Continuously, is that right? A. Yes.
- Q. Buying fish there from the fish boats, is that right?
- A. Fish boats, different trucks that come from outside.
- Q. During that period you testified to as having been in business down there, were you ever a member of the Fish Exchange? A. Yes, sir.
- Q. At the time of this trouble in the summer of 1946 were you a member of the association that followed it known as the Fish Association?
 - A. Yes, I was a member of the association.

Q. You knew Mr. Ross, did you not, through your being a member with him in those two associations, as well as being a fellow merchant there on the wharf?

A. That's right. [579]

* * *

- Q. (By Mr. Garrett): You were buying fish in 1939, were you not? A. Yes, sir.
- Q. I will rephrase it. Do you remember yester-day how you told us how you went down and met the boats when they came in and how you bought the fish without inquiring of anybody what the other dealers were offering, you just paid [580] whatever you felt was right to pay for the fish,—do you remember your testimony as to that?
 - A. Yes.
- Q. Do you remember testifying you never talked with any of the other dealers about the price you were going to pay for the fish, or what they were going to pay for it,—do you remember testimony like that?

 A. Yes.
- Q. That is all true, of course, isn't it, Mr. Vitalich? A. That is right.
 - Q. And it always has been true, hasn't it?
- A. In 1939 when we had the Exchange we had a man hired that would prorate the fish and divide the fish to each market so much.
- Q. (By Mr. Garrett): And you had that two per cent business at that time, did you not?
 - A. I don't recall how much it was.

- Q. Have you a copy of that cease and desist order?

 A. No, I haven't.
 - Q. Who is your lawyer?
 - A. Right now? [581]
 - Q. Yes. Mr. Ekdale or someone else?
 - A. I have no personal lawyer.
 - Q. Who is your lawyer?

The Court: He says he has none.

Q. For the business?

The Court: Everybody ought to have a lawyer, I concede that.

The Witness: If I need a lawyer—

The Court: Do you have a regular lawyer for your business?

Witness: No, sir, I don't.

The Court: Would you know where to find a copy of that cease and desist order?

The Witness: At that time we had—I believe it was Mr. Hix.

The Court: Were you a party to the cease and desist order?

The Witness: Yes, sir. [582]

- Q. (By Mr. Garrett): The question was: Have you or your firm, your business, has it had any lawyer since Mr. Hix? A. Yes.
 - Q. Who? A. Mr. Ekdale. [583]
- Q. Did you participate now in any meetings in the month of June 1946 with Mr. Ekdale at which Mr. Zafran was present?

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling.

Q. (By Mr. Garrett): Did you participate in any meetings with Mr. Zafran other than the one you have told us about in the month of June 1946?

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling, not within the scope of the direct examination.

Q. (By Mr. Garrett): Did Mr. Zafran ever tell you anything after that first conversation that related to the same subject that you talked about in the first conversation, that is, the contract, or the situation, the dispute, between you and the [584] fishermen.

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling.

Q. (By Mr. Garrett): Have you bought fish from all of these fishermen who are defendants here in the past?

A. I won't say all of them; I bought fish from some of them.

Q. Don't you usually buy fish at the same prices that are being quoted at the time by the other fish dealers on the wharf? [585]

* * *

The Witness: Our company—on the wharf side, on the water side, direct from the fishermen without asking anyone else what they are going to pay. I merely go down to the boat and say, "Mister, have you got any fish, and what kind of fish have you got," and if he tells me what kind of fish he has

got and I like the fish I offer him the price. If he sells it to me I will buy it. And if he says, "Well, I am going to go down the line, I want to find out from the other dealers if somebody is going to pay me more money, then I will come back."

Usually when there is a large boat, come from Mexico, the man distributes the fish himself. That happened a couple of days ago. A boat by the name of New Admiral come in and he said, "'Vince,' you want my barracuda?" [586]

I said, "Yes. How much you got?" He said, "Not very much."

And I said, "How much to you want for it?" And he said, "I want 22 cents."

I said, "All right. Give me a ton."

He said, "Well, I don't know if I can give you a ton or not, I am going to go down and find out what the other fellows want, if they want to buy any or not."

So he went down the line and found out the market didn't want to buy fish at that price. He comes back to the boat and consults with the crew. Some market offer him 21 cents. And he says, "It is better for us to sell the whole load at 21 cents than it would be to sell a thousand pounds at 22 cents and let the rest of it stay on the boat for the next day."

And he comes back to me and he says, "Vince," if you want the barracuda I can make you pay me 22 cents, but I will not. I won't take \$20 away from

you because I sold the other fellow at 21 cents and it wouldn't be fair to you that I charge you more than anybody else."

And also we buy fish from the trucks, say, for instance, like Mr. Zafran called me about a month ago and asked me if I wanted any halibut.

I says, "What is the price?"

He says, "Twenty-four cents."

And I said, "Gilbert, that is too high." I said, "I don't [587] think I want any."

And he says, "Well, I am going to bring it to San Pedro. Maybe you might buy some tomorrow."

I said, "I won't promise you."

And he brought the fish to San Pedro, where from I don't know, it came on the truck, and he come back to me the next day and he was trying to sell me halibut for 22 cents, due to the fact that the price went down, there was a lot of fish up north which interfere with this local fish when it was plentiful.

Then about an hour later or two hours later Mr. Zafran comes back again and offered me halibut at 15 cents a pound, and I says, "Gilbert, I like to help you out but I got some halibut on hand, my fish that I can't dispose of, therefore if I can sell any I will be glad to help you."

And I understood the result was he sold the halibut at 15 cents a pound to one of the dealers down in San Pedro.

Q. (By Mr. Garrett): Are you all through? A. Yes, sir.

Q. Can you tell me, do you know why the captain of that ship from Mexico, why would he ask his crew whether he could sell you any fish?

* * *

The Witness: I don't know. [588]

- Q. (By Mr. Garrett): You don't know anything about it? A. No.
- Q. And that is the reason you don't have any meetings with the other fish buyers about the price of fish, is that the reason, just what you have told me?
 - A. We have no meetings with other buyers; no.
- Q. Have you had—this account you have just given, which is quite like what you said yesterday—did you ever have any meeting with either Mr. Ross or with Mr. Ross and Mr. Ekdale in which you discussed what you would say here on the stand about fish and how it was bought?

* * *

The Witness: No, I never had a meeting. [589]

- Q. Were you a member of any committee of the fish dealers on the wharf at the time of the conversation with Mr. Zafran which you have already related here on direct examination [590] by Mr. Schwartz? A. Yes, I was.
- Q. And that committee was appointed by the association, was it? A. No, sir.
- Q. Did all of the dealers get together and appoint a committee?

Mr. Schwartz: If the Court please, I object to this line of questioning as to any reference to a committee or service on a committee or anything of that nature.

The Court: He said that he and Mr. Ross were members of the committee at the time of his conversation with Mr. Zafran on the 20th. Counsel has a right to explore it to see if it has any relationship to this conversation with Zafran.

- Q. (By Mr. Garrett): In view of your Honor's ruling I will withdraw the question and ask, how was that committee appointed?
- A. After we were asked to sign a contract and all the dealers were talking——

The Court: Was that after May 20?

The Witness: After May 20.

The Court: I do not think it is within the scope of the direct examination then. I understand it was before May 20th.

Mr. Garrett: So did I by his previous answer. It may [591] still be the fact that his previous answer is the true one and in subsequent one—

The Court: I think in view of that that the conversation is not admissible as being without the scope of the direct examination. The objection will

be sustained.

* * *

Q. (By Mr. Garrett): When were you first asked to sign a contract? A. On May 20.

- Q. When did they first talk to you about this contract? [592] A. Who?
- Q. When did anyone first talk to you about a contract for the fishermen?
 - .A. I don't remember.
- Q. Was it before May 20 or after May 20, was it in 1935 or 1936, was it 1945 or 1946?
- A. I don't remember.

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- Q. You don't remember when you were first asked to talk about the contract?
- knowledge. [593]
 - Q. (By Mr. Garrett): Isn't it a fact that you were represented at meetings before May 20th, meetings with the fishermen?
- ... A. I do not remember.

The Court: You don't remember what?
The Witness: If it was before May 20th.

- Q. (By Mr. Garrett): You talked to Mr. Zafran before May 20th about contracts, didn't you?
 - A. On May 20th.
 - Q. How about before May 20th?
 - A. I have no knowledge.
 - Q. Didn't you have contracts before May 20th?
 - A. I don't remember. I have no knowledge. [596]
- Q. (By Mr. Garrett: The first time you remember talking with anybody representing the union about anything that had to do with the way you

bought fish or the price you paid for fish was on May 20th, 1946, is that your testimony?

Mr. Schwartz: If the court please, I object to that on the ground that counsel is stating a fact which is not in evidence. [597]

The Court: Well, the union hasn't been identified, as far as this witness is concerned here yet.

- Q. (By Mr. Garrett): You know the union I am talking about is Local Union 36 of the Fishermen, is that clear to you?

 A. Yes, I know.
- Q. When I say "union" you know I am talking about Local 36?
- A. No, I don't know what union you are talking about.
- Q. We haven't talked about any other union, have we?

The Court: We haven't talked about any with this witness.

Mr. Garrett: All right.

Q. (By Mr. Garrett): What name was there on that paper that Mr. Zafran handed you? Was there the name of any labor union on that paper?

Mr. Schwartz: I object to that on the ground that the document speaks for itself, if the court please. It is in evidence.

The Court: Are you testing his recollection now? Mr. Garrett: Yes. He said he read it. He went over every page and carefully examined every page before he identified it.

The Court: He must be a lightning reader if he read that document while he was examining it here on the witness stand. If your question is whether or not he remembers what was the [598] signature on the document, if any, it is permissible. If that is what you are getting at.

Mr. Garrett: That is what I am asking him, your Honor.

The Court: All right. Do you remember the signature on the document, if any?

The Witness: I don't remember whose signature it was. It was some one's signature on there. And I tell you the truth, I wasn't interested after I read the contract whose signature was on the contract.

- Q. (By Mr. Garrett): You don't know now who the organization was that was to be the other party to that contract that you were presented with, is that right?
 - A. Yes, I know who the organization was.
 - Q. Do you know its name?
 - A. They call them Small Boat C.I.O. Union.
- Q. (By Mr. Garrett): There wasn't any such union as that back in 1939, was there, as far as you know?
 - A. I don't remember.
- Q. 1940,—do you remember any union of small boat owners? A. Yes, C.I.O. union.

- Q. Was that formed before or after you and the other [599] dealers had the trouble in 1939 when Mr. Hix represented you?
 - A. The Small Boat Union?
 - Q. Yes.
- A. C.I.O. union? I don't know when they formed.

* * *

- Q. (By Mr. Garrett): When did you first have any negotiations, if you ever had any, with this Small Boat Union which we have now identified?
 - A. On May 20th.
 - Q. Never any before that?
 - A. Not that I can remember. [601]

* * *

- Q. What did you do when you went down to the wharf during the month of June when your business was closed? Tell me some of the things you did.
- A. I might talk to someone. I didn't do anything particularly, smoke cigars.
- Q. Did you go to any meetings during that period?

Mr. Schwartz: Just a minute. If the Court please, I object to this question and any question of similar nature regarding any meetings, as improper on cross examination. I thought it had been ruled on previously.

Mr. Garrett: This is preliminary, your Honor. I think the objection might lie if and when I start to go into a meeting.

The Court: I think that is correct.

Did you go to any meeting is permissible.

The Witness: Yes, I did.

Q. (By Mr. Garrett): Were they meetings that were attended by other fish dealers at the wharf?

Mr. Schwartz: If the Court please, I submit we are going into that territory that I thought had been proscribed by the [606] Court.

Mr. Garrett: This is preliminary, your Honor.

Mr. Schwartz: I don't think it is preliminary.

Mr. Garrett: On the foundational questions before I had established the fact that there were meetings, and in order for the record to show what is being excluded, or that something is being excluded, I think we will have to show that there were meetings concerning which testimony has been sought to be elicited.

Mr. Schwartz: If the Court please, I submit that the question in the form that it is put is not a preliminary question, that it is outside the scope of the direct examination. If he wants to call the witness as his own witness, I am sure he can do so, but not on cross examination at this time.

Mr. Garrett: I think it is obvious that this is a hostile witness.

The Court: To whom?

Mr. Garrett: To the defendants. The Court: Objection sustained.

Q. (By Mr. Garrett): In the month of June, did you go to any meetings in San Pedro at which the defendants Kibre or Zafran were present?

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling. [607]

Q. (By Mr. Garrett): Did you go to any meetings in June at San Pedro at which either Mr. Ross or Mr. Ekdale or both of whom were present?

Mr. Schwartz: Same objection, if the Court please.

The Court: Same ruling.

Was the time fixed in your question?

Mr. Schwartz: In June.

Q. (By Mr. Garrett): Did you go to any meetings in San Pedro in May at which either Mr. Zafran or Mr. Kibre were present?

Mr. Schwartz: I object to this line of questioning, your Honor, at this time as to any meeting which took place after May 20th about which this witness has testified.

The Court: I think the witness may answer the question and then counsel can find out whether it is before or after the 20th. The objection is overruled. [608]

Q. (By Mr. Garrett): That was as to May, Mr. Vitalich, did you go to any meetings at which any of the members of the union were present except the ones you told us about where Zafran presented the contract?

The Witness: Yes, I did.

Q. (By Mr. Garrett): Were they before or after May 20th?

A. After May 20th.

- Q. But before June 1st, is that right?
- A. Yes.
- Q. Between May 20th and June 1st?
- A. Yes, sir.
- Q. How many such meetings did you attend,—just tell me the number.

Mr. Schwartz: Same objection, if the court please.

The Court: Sustained.

Q. (By Mr. Garrett): Did you have any meetings in May, 1946, with any members or representatives of the antitrust Division? [609]

Mr. Schwartz: Same objection, if the court please, as outside the scope of the direct examination, tending to limit this proceeding.

The Court: Overruled. I think that goes more to the question of the witness' interest or bias.

The Witness: Not that I can recall.

* * *

- Q. (By Mr. Garrett): Does that mean that you may have had some or that——
 - A. No, we didn't have.
- Q. You know definitely you didn't have any meetings with such people in May, is that right?
 - A. Right. [610]

* * *

Q. (By Mr. Garrett): Let's put it this way: Did you have any meetings or conversation after May, 1946, with any representatives of the government?

The Court: Concerning this matter?

Mr. Garrett: Yes, concerning this general matter. A. After May 30th?

Q. Yes. A. Yes.

Q. And when was the first of those meetings?

A. The first conversation, I don't remember when it was, exactly, what day it was, I don't remember.

- Q. Was it a personal conversation or by telephone?

 A. Personal.
- Q. Was it while your plant was still closed down or afterwards?
 - A. When the plant was closed down.
- Q. That would put it somewhere in the month of June, is that right?
 - A. Sometime in June. [611]
- Q. And where did that meeting take place, or conversation?

Mr. Schwartz: May the record show that we object to this whole line of questioning as to any meetings which took place in June of 1946, as outside the scope of the direct examination, and as not being material to the issues in this case:

The Court: Overruled.

* * *

The Witness: Upstairs on the sixteenth floor, I believe it was, of this building.

The Court: That was in June of 1946?

The Witness: Yes, sir.

Mr. Garrett: May I have Sherman's A, please?

(The document was handed to counsel.)

Q. (By Mr. Garrett): Do you know about these letters that were prepared by Mr. Margolis and Attorney Ekdale?

Mr. Schwartz: I object to that, if the court please, on the ground it is outside the scope of the direct examination, and I ask the court to limit the cross examination.

The Court: The objection is sustained. [612]

- Q. (By Mr. Garrett): Did you have any of the other fish wholesalers with you in this meeting that you have mentioned on the 16th floor of this building in June? A. Yes.
 - Q. Did you have Mr. Ekdale with you?

 A. Yes.
- Q. Now, I suppose among the dealers who were with you was Mr. Ross, is that right?

. A.. I believe he was.

* * *

- Q. (By Mr. Garrett): Were you a member of the committee at that time? [613]
- A. What committee?
- Q. The committee of fish wholesalers from the wharf? A. Yes, I was.
- Q. And the other members of that committee were,—G. Cigliano, was he a member?

Mr. Schwartz: I object to this whole line of testimony as outside the scope of the direct examination.

The Court: Overruled.

Quinter (By Mr. Garrett): Cigliano, was he a member? A. Member of what?

- Q. The committee that you were on?
- A. Yes.

* * *

- Q. (By Mr. Garrett): Was there a member of the committee whose name began with "S," and was something like Silenta? A. Yes.
 - Q. And then there was G. Cigliano? [614]
 - A. Yes.
- Q. This one here is,—the initial is "J" and it is D-u—is there anyone on that committee whose first initial was "J" and whose last name began with "D-u?"
 - A. It might be Da Messa.
 - Q. Was he on the committee? A. Yes.
 - Q. J. Da Messa? A. Yes.

- Q. These committee members, these persons you have identified as being on the committee with you, Silenta, Da Messa, Cigliano, and Ross, were they all with you at that meeting on the 16th floor that you have testified about?
 - A. I believe they were.
 - Q. Together with Ekdale? A. Yes, sir.
- Q. Any other fish wholesalers from the wharf besides [615] the ones I have mentioned?
- A. I believe the whole group of wholesalers was together.
 - Q. They were all there, were they?
 - A. Yes.
- Q. That is 10 or 11 all together, including yourself?

 A. Yes, sir. [616]

Q. Will you tell me, Mr. Vitalich, how the committee which you were on with Mr. Ross and Mr. Salenta and Mr. Di Massi and Mr. Cagliano, will you tell me how that committee was selected?

Mr. Schwartz: I object to that, if the Court please, as not material to the issues in this case, nor is it proper on cross examination in pursuing this line of questioning further.

The Court: Objection sustained.

Q. (By Mr. Garrett): Can you tell me whether in the month of June you were a member of the fish association? [619]

Mr. Schwartz: If the Court please, I object to the question first, as to the form. There has been no evidence that there is a fish association.

The Court: Sustained. [620]

* * *

Q. Do you have any sales that you made through any connection in Los Angeles which don't show on your books, the ones you keep in San Pedro?

A. No, sir.

Mr. Garrett: No further questions.

The Court: Cross examination on behalf of the remaining defendants?

Mr. Anderson: Yes, your Honor.

The first thing we should like to do, may it please the Court, is move to strike the testimony of Mr. Vitalich regarding the alleged sales of fish outside of the state of California for the year 1945, on the basis that it is too remote to any issues involved in this case, and further based on the premises that

the witness testified that in 1946 he did not know—that is the time involved in these proceedings—whether or not during that period he had sold or shipped any outside of the state of California.

Mr. Schwartz: If the Court please, I object to that.

The Court: He didn't give any testimony about 1946 so there isn't anything to strike there. 1945 is not too remote. The motion is denied.

Cross-Examination

By Mr. Auderson:

- Q. Mr. Vitalich, as I recall your testimony, you have been in the fish business for a good many years? [621] A. That is right.
 - Q. Have you ever been a fisherman?
 - A. No, sir.
 - Q. You have owned boats in the past?
 - A. I have shared in two boats.
 - Q. A share in two boats?
 - A. I had a share in two boats.
- Q. Did those boats operate out of the port of San Pedro?
- A. Yes, sir, sometimes they operated at Santa Monica.
 - Q. But in this general area, is that correct?
 - A. That is right.
- Q. At that time did you have your present place of business at San Pedro?

 A. Yes, I did.

- Q. When was it that you owned the boats, to satisfy Mr. Schwartz?
- A. One boat I shared in, I think it was in '39, and the other one I think around about '40 or '41.
- Q. Did you own substantially a half interest in each [622] vessel?
- A. In one of them I did own half, in the other—well, both was 50 per cent owned by me.

The Court: Both of them?

The Witness: Yes, sir.

- Q. (By Mr. Anderson): How long did you have this interest in those boats?
 - A. How long did I have the boats?
- Q. How long did you retain your interest in those boats?
- A. The first one was about, I presume, a year and the second one would be probably a year and a half?
 - Q. What was the size of the crew of each vessel?
 - A. The first one I think was two.
 - Q. And the other one?
 - A. And the other one I think was two.
 - Q. Two besides the master?
- A. No, my partner he was the master on one of them for a while.
- Q. In other words, a master and then a crew of two?

 A. A crew of one, or two sometimes.
- Q. One or two depending on what fish you went for, is that correct? A. What?
- Q. You say sometimes there would be a crew of two [623] besides the captain?
 - A. Yes, sometimes one and sometimes two.

- Q. I assume the catch by those boats was delivered to your place of business?
 - A. It was not.
 - Q. Were they sold on the market generally?
 - A. Yes, sir.
 - Q. Now in 1944 did you own the boat the Lee B?
- A. It was 1944 I believe we still had it. I believe I had it. I am not quite sure. I don't remember when I sold it.
- Q. Was the Lee B one of the boats that you mentioned? A. Yes, sir.
- Q. When did you sell the Lee B? You mentioned that you had one in '39 and one in '40. When did you sell the Lee B?
 - A. I don't remember when I sold that.
 - Q. Can you give me an approximation?
 - A. I couldn't say.
 - Q. Was it '43?
 - A. I don't remember?
 - Q. '44?
- A. I think it was prior to '44, if I am not mistaken.
 - Q. Somewhere between '40 and '45?
 - A. Yes. [624]
 - Q. You are sure you don't own it now?
 - A. No, sir.

The Court: You mean you are not sure?

The Witness: I am sure that I am not owning it now. [625]

- Q. So you became generally familiar with the methods used in catching fish, didn't you?
 - A. I don't know nothing about fishing.
 - Q. You don't know anything about it?
 - A. No, sir.
- Q. You, of course, are well acquainted with all of the fish dealers on the pier there at San Pedro, aren't you?
 - A. I am well acquainted with them; yes.
- Q. There are about a dozen, are there, including you?
 - A. Yes.
- Q. And during the time that you had this association, this first association which was ordered to cease operations by the Federal Trades Commission, you became very intimately acquainted with all of the owners of those various businesses, did you not?

The Witness: Yes, I know them all well.

- Q. (By Mr. Anderson): You still know them all very well, don't you?
 - A. Some of them are out of the business.
- Q. Well, those who are presently engaged in the business there, you know very well, don't you?
 - A. Yes. [627]
 - Q. They are friends of yours?

Mr. Schwartz: If the court please, I object to any further questioning along this line.

The Court: Objection sustained. Who is whose friend here, I don't think makes any difference.

Mr. Anderson: I don't think it makes a great deal of difference either.

The Court. Let's go on, then.

* * *

Q. (By Mr. Anderson): During this period of time, and before that association was disbanded, you members of the association met from time to time at lunches or dinners and discussed the problems of the fish industry, did you not?

Mr. Schwartz: I object to that, if the court please, as not material to the issues of this case.

The Court: I think so, and I think it is pretty remote too. The association was dissolved, according to the testimony, in 1939.

Mr. Anderson: The organization was dissolved, may it please the court, according to the testimony.

The Court: That is the only thing I have to go on here.

Mr. Anderson: I quoted the words "according to testimony." We don't believe it is dissolved.

Mr. Schwartz: I object to that statement by counsel and ask that the jury be instructed——

The Court: Yes, the jury is instructed to disregard it. Objection sustained.

Q. (By Mr. Anderson): After 1939 when that association was dissolved, did you join the new organization, the Western Fish Institute, or whatever the name of that second organization was?

A. I think I was a member of Western Seafood Institution after the O. P. A. got in existence.

- Q. As I understand it, the old association was dissolved before 1939 or 1940 when you were served with the cease and desist order, is that correct?
 - A. That's right.
- Q. And then you joined this new institute shortly thereafter, isn't that correct?

Mr. Schwartz: If the court please, he just stated he joined it when O. P. A. came into existence, and I object to counsel testifying. [629]

- Q. (By Mr. Andersen): Can you give me the year when you joined the institute?
 - A. I don't remember.
- Q. Do you know if the organization was formed at the time the O. P. A. came into existence or whether it had been in existence prior to that time?
- A. I do not know whether it was in existence or not.
- Q. Would you tell us who directed it to your attention?
- A. I don't remember who it was. I think it was Mr. Lawton.
- Q. Mr. Lawton was the man who acted as sort of a manager or agent of the institute, is that correct?

Mr. Schwartz: If the court please, I object to any further questions about the Western Seaford Institute. Whatever purpose they have apparently has been indicated by Mr. Anderson as possibly going to their defense in this case, and we have already argued that subject before the court, and the court sustained it.

The Court: I don't see how it is within the scope of the direct examination here. The only possible ground of admissibility would be to show bias or prejudice on the part of this witness.

Mr. Anderson: It also goes to impeachment, as I view it.

The Court: I said bias or prejudice. Are you laying [630] a foundation for impeachment?

Mr. Anderson: In part, yes, I am endeavoring to lay a foundation for it, your Honor. [631]

The Court: Then the question is not in the proper form.

* * *

The Court: The objection will be sustained. Let's get on.

* * *

Q. (By Mr. Anderson): You mentioned Mr. Lawton—Mr. Lawton was an officer of this organization, this Western Food Institute, is that correct?

Mr. Schwartz: If the court please, I thought we had just gone into that.

The Court: Are you objecting?

Mr. Schwartz: Yes, sir.

Mr. Anderson: This is preliminary, your Honor; purely preliminary.

The Court: The objection is sustained. [632]

The Court: Did Mr. Lawton ever represent you, your firm, in any negotiations with Local 36?

The Witness: Not that I can remember.

Q. (By Mr. Anderson): Do you have any records in your office which might refresh your recollection on the question?

- A. When the O. P. A. went out I threw all my records away.
- Q. Do you know of your own knowledge if Mr. Lawton ever represented any of the other fishermen on your pier there in any negotiations with the fishermen's union mentioned?

Mr. Schwartz: I object to that, if the court please.

The Court: Objection sustained:

Q. (By Mr. Anderson): After the dissolution of the association you and your fellow dealers on the wharf there also met from time to time, did you not, to discuss fishing in general.

Mr. Schwartz: I object to that, if the court please on the ground it is immaterial to the issues in this case.

The Court: Objection sustained. [634]

Q. (By Mr. Anderson): During the first five months of 1946, that is, from January through May, did you meet with the other 11 or 12 dealers on the dock there to discuss fish prices or fish negotiations with the union? [635]

A. I don't remember.

* * *

Mr. Schwartz: Just a minute. If the court please, I would like to ask—I think we are faced here with a language difficulty. I think your Honor's previous examination has pertinency.

The Court: I think that is possibly so.

When you say you don't remember, do you mean

you would have had meetings like that and not have remembered them?

The Witness: No, I don't remember having any meetings. [636]

The Court: In other words, you remember that you did not have any meetings, is that what you mean?

The Witness: That's right.

The Court: All right.

- Q. (By Mr. Anderson): You understand everything I say, don't you, Mr. Vitalich?
- A. I understand—not quite, sometimes. That is why I ask to repeat the questions.
- Q. Any time you don't understand what I say, or anybody else says, I wish you would tell the court. The court wants to see that you understand all these questions before you answer them.

Then on May 20th of last year was that the first time that you had any idea at all that a contract was going to be offered you by the union?

Λ. Yes, as far as I can remember. [637]

Q. Do you know if on May 20th, or the same day of this contract, the day that Government's Exhibit No. 3 was presented to you, if that contract was presented to other dealers on the dock there?

A. No, I do not know if it was presented to the other dealers.

Q. Well, shortly after you received that contract you inquired of the other dealers as to whether or not they had received prepared contracts, didn't you?

- A. I don't know if I asked them the same day or the next day or a couple of days later. I don't know.
- Q. Right about that time you got in touch with the other dealers?
 - A. Within, I would say, two or three days.
- Q. Within two or three days, and mentioned to them that this contract had been received by you, and that all of you ought to have a meeting about it, is that correct?

* * *

The Witness: I think the group of fishermen [647] called the meeting and asked us to meet with them.

- Q. (By Mr. Anderson): Is that the way it occurred?
 - A. I believe it did.
- Q. Did you fish dealers have a meeting yourselves?
 - A. Not before that?
 - Q. Did you have a meeting after that?
 - A. Yes.
- Q. That is, all of you fish dealers had a meeting after?
 - A. Yes.
- Q. Do you recall when the first meeting was held?
 - A. The first fish dealers' meeting?
- Q. Yes. Was it within two or three days after receiving Government's Exhibit 3, the contract?
- Λ. I think it was the next day after we met with the fishermen we had a meeting, fish dealers' meeting.

- Q. The next day after you had the meeting with the fishermen?
 - A. Right.
 - Q. Who was at the meeting with the fishermen?
 - A. I was there. [648]

* * *

- Q. Just in the interest of time, were most or all of the fish dealers there, or represented?
 - A. I would say about half of them.
- Q. Was Mr. Zafran there from the Fishermen's Union?
 - A. I believe he was.
- Q. And somebody else there from the Fishermen's Union?
 - A. George Knowlton.

- Q. Would that be about the 29th of May? [649]
- A. No. We had a meeting of our fish dealers about the day after we met with the fishermen.
- Q. First you met with the fishermen and then you had your own meeting?
 - A. That is right.
- Q. You had the meeting with the fishermen a couple of days after you received the contract, is that correct?
 - A. Something like that.
- Q. Well, now, when Mr. Zafran called upon you and gave you the contract, how long was he in your place of business?
 - A. He was at the door.

- Q. How long was he there?
- A. For just a few minutes.
- Q. Was he there about half an hour discussing this contract with you?
 - A. No, sir.
- Q. You had never heard of that contract before that time?
 - A. No, sir.
- Q. You had no indication at all that the union wanted to enter into collective bargaining contracts with you?
 - A. No, sir.

- Q. Did you read the contract while Mr. Zafran was there? A. No, sir.
- Q. Did you discuss any terms or provisions of the contract with him while he was there?
- A. I asked him what it was all about, and he says, we want a contract, you should sign a contract to fix the price for the fish.
- Q. Didn't he tell you that the fishermen simply didn't want to go out to fish unless they knew the price that they would get before they went out?
- A. At that time he didn't say that. He said, "Take the contract and read it and sign it."
- Q. Do you mean to tell me that he just came up and handed you this contract and said, "Read it and sign it?"
- A. No, he told me it was—the union wanted to have a minimum price for the fish.

- Q. Before they went out?
- A. He said that the union wanted a signed contract, agreement, to the effect that they will not go out unless they get a minimum price of so much for the fish.
 - Q. For so much money for various types of fish?
 - A. Yes; minimum price.
 - Q. That is true, is it? A. Yes, sir.
- Q. And did you discuss with him about when you would give him an answer as to whether you would sign?
- A. I didn't discuss it to him. I told him I would read it over.
- Q. Did you tell him that you would get in touch with him, or did he ask you to get in touch with him, or did you ask him to get in touch with you?
- A. I don't remember if he told me or I told him I would get in touch with him. I think he said that he will be back to pick up the contract.
 - Q. Be back to what?
 - A. To pick up the signed contract.
 - Q. To pick up the signed contract?
 - A. Yes. [652]

- Q. (By Mr. Anderson): There are about 200 or more boats that bring fish in there, aren't there?
 - A. I don't know exactly how many there are.
 - Q. I don't care about exactly. I said about 200?
 - A. Probably 150, 200.

- Q. That is close enough. And all of those boats when they catch fish, they bring them in and tie up at various [653] places along the dock there, and, of course, want to sell their fish to one or more of the dealers, isn't that correct?
 - A. That's right.
- Q. You, of course, always keep yourself advised as to the price of the fish, don't you?
 - A. Keep myself advised?
 - Q. Yes. A. Yes, I do.
- Q. You keep yourself advised of what you called on your direct examination the market price of the various types of fish, isn't that correct?
 - A. That is right.
- Q. So when boats come in with fish to sell, you of course know what the market price is, don't you?
 - A. No, I don't right away.
 - Q. You don't right away?
- A. Sometimes I go ask the fishermen how much fish he has got.
- Q. Sometimes you ask the fisherman, or, as you testified on direct examination, sometimes you telephone all over to determine—
- A. First I ask the fishermen what fish they got and what kind of fish they got. [654]
- Q. And then you telephone all over to determine what the market price is?
- A. No, I don't—I try to find out what the market price is, how much fish comes into other ports, if any.

- Q. When you try to find out the fish that goes into another port, or the market price at another port, who do you telephone,—the dealers in the other ports?
- A. I call up, say, Los Angeles, and see if there is any boats of barracuda coming in, would they be interested in any barracuda.
- Q. You mentioned that sometimes fish come into another port; what do you mean by another port?
- A. Say, San Diego, Santa Barbara, we call up the customers and ordinarily a customer will say, "I got enough barracuda today," or I say, "Where from?" And they say, "San Diego." And they even tell us the price they pay.
- Q. Do you find out the price that was paid for the fish at the other ports, do you?
- A. Not necessarily what they pay in the other ports. What the customer paid to the dealer from other ports. [655]
- Q. I say you are interested in two things, generally, I assume; one is the price that the customers pay, that is, the retail markets pay for the fish, and you are interested in what the dealers pay the fishermen for the various species of fish, isn't that true?
 - A. In different ports, yes.
- Q. And you ascertain those prices, do you not, by talking to, as you mentioned, the places uptown, the shops uptown, and also you find out what the price is by telephoning the other ports, too, don't you?

 A. That's right.

- Q. You talk over the telephone, then, to the people uptown, the shops uptown, to find out what they pay, you phone, we will say, San Diego, or some other fishing ports in this vicinity and find out what the price is there,—that is correct, is it?
- A. Yes, I find out if there is any fish in any other port and I find out what is the market price at Los Angeles or elsewhere.

The Court: By market price what do you mean,—the price that the retailer here pays for fish?

The Witness: Retailer or wholesaler.

The Court: Or wholesaler? [656]

The Witness: Yes.

The Court: Pays for fish from fishermen or from the dealer?

The Witness: From the dealer.

The Court: The market price that the dealer gets, is that what you mean, or the market price that the fishermen gets?

The Witness: The market price the dealer gets.

- Q. (By Mr. Anderson): By the market price that the dealer gets, you mean the resale price—strike that, please. Do you consider yourself a dealer? A. Yes.
- Q. And do you also consider yourself a whole-saler? A. Wholesale fish dealer.
- Q. And the other people on this dock in San Pedro are in the same position as you are, that is, wholesale fish dealer? A. That's right.
- Q. They have wholesale fish dealers at San Diego also in these other ports around here?
 - A. I believe they have.

- Q. You phone San Diego occasionally to find out what the wholesale dealer price is, don't you?
- A. I would call up San Diego and ask them if they need any barracuda, as an ordinary customer.
- Q. Are you talking about calling another dealer, that is, another wholesale dealer?
- A. Because we do buy fish from San Diego and we do sell fish in San Diego; and also in Santa Barbara, and we also buy fish from Santa Monica.
- Q. Well, let's assume that a load of fish comes into San Pedro and the boat ties up somewhere near you and you and the other dealers want to buy some fish, all of you offer about the same price for the fish, don't you?

 A No, we don't.
- Q. Do you all offer different prices; do you, for the same fish?
- A. If a boat comes into San Pedro, as I stated before, I walk up to the boat and wait until he lands, the captain comes off on the wharf, I ask him what fish has he got, and he tells me what he has got and how much he has got, and he will ask me the price. And if I know it already that there is no fish some place else, I would say, "I will take a ton of barracuda, two ton of barracuda and pay you," say, for instance, "20 cents, 22," because I know that I can sell it because there is no fish in another port to my knowledge. Then he will go down the line and find out if he can get more money for his fish. Sometimes there are two or three of us right at the present time when I offer him a price.
 - Q. Sometimes what? [658]

A. There will be two or three dealers present right by the boat, and when the captain asks what is the price of barracuda, I will say 22 cents, and probably there will be two or three dealers right there listening to me offer him the price.

Q. 22 cents?

A. Yes. Maybe 22, maybe 21, whatever it happens to be.

Q. Of course, the price to a certain extent depends upon the amount bought, too, doesn't it?

A. Yes.

- Q. (By Mr. Anderson): What I am trying to say is this: If a boat comes in and has a lot of barracuda, say, 10 or 12 boxes, if he were to sell the 10 or 12 boxes, say, to your company, for instance, he would probably get less money, that is on the poundage basis, for the 12 boxes, than he would if he were to sell you, say, just one box? Do you understand what I say now? [659]
- A. If a fisherman comes in and brings in 10 boxes of barracuda, if he sells it all to me, if I offer him satisfactory price then he doesn't care to sell somebody else, he will sell all to me. I have boat that sell me fish whole load, maybe a ton, maybe two ton, a thousand pounds; I have some men in this room sold me their entire catch from day to day.
- Q. What I mean, Mr. Vitalich, is it customary when you buy a large quantity of fish to get a slightly better or lesser price than if you only bought, say, one box out of 12 or 15?

- A. Not necessarily. You get cheaper—demand and supply controls your market.
- Q. In other words, if a man comes in with 15 boxes of—say, two tons, as you mentioned, of barracuda, and you say there is no demand, if he wants, we will say, 24 cents,—that is a figure that has been mentioned here before—you might say, "I will give you 20 cents," or "I will give you 18 cents," or whatever price you offer, is that true?
- A. Whatever price I think is right for me so I can sell it.
- Q. That is in the light of how much fish you have on storage, in the light of how much fish you have in your plant, in the light of how much fish you might be able to sell, then you offer him a price in relation to what you think you can do with it, is that true? [660]

 A. That's right.
- Q. (By Mr. Anderson): Let's take, for instance, the precise example that he talked about on direct examination, your Honor,—I believe it was Mexican halibut that was mentioned,—that halibut was originally offered to you, say, by Mr. Zafran at, I believe, 23 cents a pound, is that correct?

 A. 24 cents a pound.
- Q. 24 cents a pound. And you testified that it eventually sold at 15 cents a pound?
 - A. Right. [662]
- Q. In other words, when it was first offered to you?
- A. I understood it was sold for 15 cents a pound, I said.

- Q. Yes, that is what you said, what you testified to. In other words, the fish was originally offered to you at 24 cents a pound, you wouldn't pay 24 cents a pound, is that correct?
 - A. That is right.
- Q. Then the price went down and down until you understood it sold for 15 cents a pound, is that correct? A. Right.
- Q. That happens quite frequently in this business, doesn't it? A. No, it don't.
 - Q. Is that a very infrequent occurrence?
- A. Yes, a big drop of price like that comes occasionally. As I stated before, whenever we get fish up north like filet of sole, filet of rock cod, up from Seattle, Eureka, Astoria, all that fish is shipped to the Los Angeles market, San Francisco market, San Jose and Sacramento—all over California and other places in the United States, and that fish competes with our fish in San Pedro. [663]

Q. You import some of it too?

A. Very little.

- Q. When the fisherman comes in with his load of fish, he doesn't know what price he is going to get for it, does he?
 - A. No, I don't think he does.
- Q. And he doesn't know what price he is going to get for the fish before he goes out, does he?
 - A. No, sir, he don't.

. . .

- Q. And that has been the custom in the fishing business at San Pedro ever since you have been in business there, hasn't it?
 - A. I believe it has been.
- Q. From how many boats do you customarily buy your fish, from just a few of these 150 to 200 or from all of them?
 - A. I will say approximately about 75.
- Q. From time to time you buy fish from 75 boats?

 A. I will say approximately 75.
- Q. Now do most of these boats have a crew of three to six men?
 - A. Well, there is some they got 10 men, 11 men.
- Q. Those are the boats that come from San Diego, aren't they?

 A. No. [664]
- Q. (By Mr. Andersen): What I am getting at is that these boats that have more than six men in the crew, they are usually not considered a part of the small boat fleet, are they, because they are large boats?

 A. I wouldn't say.

The Court: Do you buy fish from them?

The Witness: Yes, sir.

The Court: In the fresh fish market?

The Witness: Yes, sir. We buy fish from small boats [666] and big boats.

- Q. (By Mr. Andersen): From small boats and big boats?

 A. From small fleet and big fleet.
- Q. Is the small boat fleet—we will put it this way—the smaller boats spend more of their time—withdraw that.

Do the smaller boats spend more of their time fishing for the fresh market than these boats which have 11-men crews that you have mentioned?

A. Well, we have some large boats that fish for us all year around.

Q. All the year 'round?

A. They bring fish to the market all year 'round, either here or San Diego or wherever they happen to be.

Q. Then getting back to the prices, the fisherman when he goes out doesn't know what the price will be, he doesn't know what the price will be when he comes in with his catch, and you determine what the price is in the market and then you go down and offer him what you think the market price is, is that generally correct?

A. Generally it is handled as sort of an auction.

Q. You say there is an auction?

A. I say it is sort of an auction like on the buying system.

Q. Well, Mr. Vitalich, when a boat comes in and you and two or three others go down there, and we will say there is a normal supply of fish, do you and the two or three other dealers who go down there bid against each other to get the price up?

A. If fish is scarce.

Q. I say, there is a normal supply of fish?

A. If there is a lot of fish, more than we can use at that particular price——

- Q. At what particular price?
- A. That the fishermen ask. It might be 18 cents, 20 cents, whatever he happens to ask for it.
 - Q. You always offer the same price, don't you?
 - A. No, we don't. [668]

* * *

- Q. When is the last time you purchased a large amount of fish?
- A. The last time a large amount of fish, substantial I call it, I purchased four ton tuna, my company purchased four ton tuna.
 - Q. Did you purchase that from this-
 - A. From one of the large boats.
 - Q. Is that a regular tuna boat?
 - A. Yes, sir.
- Q. Let's talk about the last time you purchased, we will say, a large amount of barracuda?

Mr. Schwartz: If the Court please, I will object unless a date is fixed here.

The Court: I cannot see the materiality of it.

Mr. Andersen: I simply wanted to get into the method of pricing, your Honor.

The Court: I think you have covered that pretty well, counsel, in your cross-examination of this witness, and any further examination of it would serve no purpose at all in illuminating the jury as to the issues that are involved in this case.

Mr. Andersen: This was all done on direct examination, your Honor.

The Court: Counsel, you have heard my ruling. Mr. Andersen: Yes, your Honor.

The Court: Everything has been exhausted from this witness on the matter of his method of doing business until the point where I think that you should pass on to some other feature of your crossexamination, if you have it.

Mr. Andersen: I have one other aspect of that that I want to go into, not at great length, your Honor.

- Q. Did you during the fishing season spend the bulk of the time in your place of business there?
 - A. During the fishing season?
 - Q. Yes, during the time your plant is operating.
- A. Yes, I spent most of my time there, every day practically.

The Court: When is the fishing season?

The Witness: What kind of fishing season? Fishing season is all around the year.

- Q. (By Mr. Andersen): Say during the months of May and June. A. Yes.
- Q. In other words, you work at your place like we do at ours, is that correct, you spend all of your time at it?
- A. Not all the time. I go out for vacations sometimes.
- Q. Well, then, when you go to your place down there on the dock you learn what the other fish dealers are paying for the fish, don't you? [670]

Mr. Schwartz: If the Court please, we have been all over this before.

The Court: Yes, I think so. Objection sustained. Repetitious and going over the same ground again.

Mr. Andersen: All right, your Honor.

- Q. You mentioned that you have a storage capacity there of 15 to 20 tons, is that correct?
 - A. Icebox.
 - Q. I beg your pardon?
 - A. It is an icebox, storage capacity.
- Q. You also mentioned that you had other storage facilities at the Union Ice Company?
- A. I have not. It belongs to the Union Ice & Storage Company. I store my fish there.
- Q. Are those facilities unlimited, I mean, can you store any amount that you wish to there?
 - A. No, you can't.
- Q. Up to what amount have you stored there from time to time—let me strike that and put it this way:

Has there been any limitation on the number of tons that you could store there?

- A. Yes, there has been.
- Q. What is the largest number of tons of fish you have been permitted to store there?
- A. Well, there is no such a restriction on what you [671] want to store there from the Union Ice and Storage Company if they have available facilities.
- Q. Have you always been able to store there such as you wished?

 A. No, sir.
- Q. What is the largest number of tonnage you have ever stored there? A. Just when?
 - Q. Any time in the last five years.
 - A. I will say approximately 40,000 pounds.

The Court: At one time?

The Witness: No, different varieties of fish. If I put the fish in storage, maybe I put a thousand pounds in today, or maybe 500 pounds tomorrow, or 10,000 pounds the next day. That would accumulate there probably until a period of two or three months, or four or five months sometimes.

The Court: I don't understand your answer. Counsel asked you the most and you said 40,000 pounds. You have had as much as 40,000 pounds at one time in storage?

The Witness: I have had as much at one time. Not stored at one time.

The Court: Not stored at one time?

The Witness: No.

- Q. (By Mr. Andersen): I mean the largest number of tons you have stored [672] there at one time, not that you have put in at one time but the greatest amount of fish you have had in storage at any one time.
 - A. I presume approximately 10,000 pounds.
- Q. Is there any other place where you can store fish in the same manner?
 - A. That I can store?
- Q. Yes, that your firm can store fish in the same manner.

* * *

The Witness: No, I have not. I did store a small amount of fish in the Los Angeles Ice & Storage Company on just occasions.

Q. (By Mr. Andersen): You mentioned that you had some shrimps?

- A. In Union Ice & Storage at San Pedro, or Wilmington rather.
- Q. You don't purchase shrimps from those boats, do you, that is, the boats of this union?

A. No, sir.

Mr. Andersen: That is all. [673]

The Court: Redirect.

Mr. Schwartz: Just a few questions, your Honor.

Redirect Examination

By Mr. Schwartz:

- Q. Mr. Vitalich, you were asked some questions by Mr. Andersen about determining the market price. I would like to clear up this matter about whom you call. Are they brokers or dealers who want to buy your fish, is that what you call for?
 - A. What do you mean?
- Q. When you called up these different places to determine what Mr. Andersen called the market price, I understood that you put in telephone calls to various people in Los Angeles and other ports.
 - A. That is right.
- Q. Is the information that you are seeking, that you are asking concerning whether these people will buy your fish and pay a certain price?

A. No.

Mr. Andersen: I am going to object to that as leading and suggestive.

The Court: Yes, it is leading and suggestive.

Q. (By Mr. Schwartz): What is the information that you try to get when you make these telephone calls?

The Court: Let me ask: Who do you call, your customers? [674]

The Witness: Yes.

The Court: You call other dealers, other wholesale dealers?

The Witness: No, I call my customers.

The Court: All right.

Mr. Schwartz: Thank you. That is all I wanted.

The Court: The witness may be excused.

(Witness excused.) [676]

JOHN LOUIS DI MASSA

* *

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: John Louis Di Massa; D-i M-a-s-s-a. [677]

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation?

A. I am copartner and manager of the Los Angeles Fish & Oyster Company in San Pedro.

- Q. What kind of a business is that?
- A. We are in the wholesale fish business, processing of fresh fish.
- Q. How long have you been in the wholesale fish business, Mr. Di Massa?
- A. I have been actively engaged—I graduated from high school in '35, but I was there four years prior to graduating from high school. I have been the manager since 1939.
- Q. Who else is interested in that business with you?
- A. There is G. Di Massa, my dad, there is John Joseph Demeglio, a partner, Frank L. Glenn, a partner, Carmen Frank Di Massa, a partner, and Lucile Di Massa, a partner. [678]
- Q. What are your duties as the general manager of the L. A. Fish and Oyster Company?
- A. Buy fish from the fishermen, buy fish outside from various brokers, price the fish which is to be sold, more or less call the signals for the company.
- Q. At the end of each day are you familiar with the purchases made by your company?
- A. Yes, sir, I am; we have a complete record of all purchases and sales.
- Q. Do you have anything to do with relation to the records or books kept by your company?
 - A. I check the books of the company.
- Q. With relation to the sales made by your company do you know at the end of each day what those sales are?

A. Yes, sir, I do; I go through the sales book at the end of the day, check the prices——

The Court: Do you know that without going through the books, generally?

The Witness: I have a general idea, your Honor. Then I always check the books to see that there is no mistake in regards to the price.

- Q. (By Mr. Schwartz): So at the end of each day you generally know where the sales have been made? A. Yes, sir.
- Q. Whether they are intrastate or interstate sales? [679] A. Yes.
- Q. (By Mr. Schwartz): With reference to the purchase of fish at San Pedro from the fishermen, will you relate what, if anything, you personally have to do with that?
- A. When the fisherman brings in his catch I have an idea what I can pay for it; if I could buy it at that price and make a profit, I buy it; if he wants too much, I just don't buy it.
- Q. Where does the negotiation for this sale of fish or purchase of fish take place?
 - A. Usually on the dock.
 - Q. Right where the boat is tied up?
- A. Where the boat is tied up. Usually when the captain is still at the wheel, while the boat is being tied.
 - Q. What happens?

- A. Well, if he has barracuda—"What do you want for it?" "12 cents." Well, if I think I can make money at 12 cents, I buy it. If it is too high, I don't buy it. That is all there is to it.
- Q. Does it happen that at the time the fishermen come [680] in that there are times when there is more than one dealer present?
 - A. Yes. Especially when it is scarce.
 - Q. What happens on those occasions?
- A. Well, we all make a run, help him tie up the boat and everything else, to buy his catch.
- Q. Will you describe the type of negotiation that takes place for the purchase of the fish?
- A. Well, he knows the market is scarce, he will ask a high price. He usually gets it when it is scarce, because of the demand for fish.

Mr. Andersen: I move all this be stricken, may it please the court. It is purely speculative. It is a conclusion and opinion of the witness.

* * *

The Court: The portion of the answer where he describes what is in the mind of the boat captain is stricken. [681]

- Q. When there is a boat that comes in, and there are more than two dealers, there are two or more dealers at that boat landing, negotiating for this fish, will you describe the negotiation without stating what is in the mind of the boat captain?
 - A. Usually he divides it up.

Q. All right. Will you describe the nature and type of bidding that takes place, if any?

A. If he wants 12 cents, we all buy for 12 and he will give each market so much. Some market he will favor, that bought when fish was plentiful, he will give more, and those who didn't help him out he would give less, or maybe none. [682]

Q. When a sale is consummated, whether it be to a group of dealers or to you alone, describe what happens?

A. The fish is brought into the market and weighed on a scale, and a fish and game ticket is made out, sometimes there may be seconds, No. 2 fish we call it, and that is a cheaper price.

The Court: What is a second?

The Witness: The fish may be bruised, your Honor.

The Court: Bruised?

The Witness: When they bring it aboard the boat, or broken. It has to be cut away. There is a loss in the fish. Those are entered on the fish and game ticket. One copy is given to the fisherman, we retain two copies. It is in triplicate; one given to the fisherman, two copies we keep, which the fish and game picks up every two weeks or three weeks, and one we keep on file at all times.

Q. (By Mr. Schwartz): When is the seller of that fish paid for that transaction?

A. Any time—we usually try to make it on a Monday, but if he wants the check then we pay him the check or cash, whatever it may be, whatever is his desire.

The Court: The custom is Monday is settlement day?

The Witness: It is. We try to. It makes it easier on the bookkeeper.

- Q. (By Mr. Schwartz): Do any of these fishermen from [683] whom you purchase fish work for the L. A. Fish and Oyster Company as employees?

 A. No, sir.
- Q. Does the L. A. Fish and Oyster Company employ any fishermen who go out on boats and bring back fish?
- A. No. As regards to going and catching, no, sir.
- Q. Does the L. A. Fish and Oyster Company have an interest in any vessels?
 - A. No, sir, we haven't.
- Q. What interest, if any, does the L. A. Fish and Oyster Company have with regard to fishermen as to whether they may be or may not be employees?

The Court: I don't understand your question.

- Q. Well, there was some qualification the witness made, and I am trying to get what that was.
- A. The good will the company has towards some fishermen. By that I mean there is a lot of times when there is a lot of fish and the fisherman is stuck with two or three hundred pounds of fish, and we will buy if off of him, knowing that some days the fish is scarce and the fisherman will give us a break and sell us the fish when it is scarce. The only thing I can say between the L. A. Fish and Oyster is good will.

Q. Is there any employer-employee relationship?

A. No, sir. [684]

The Court: Do you ever finance any fisherman for a portion of the lay?

The Witness: Yes.

The Court: The lay is what they call the catch? The Witness: Towards equipment, for paying their grocery bill or fuel bill.

The Court: You do that?

The Witness: We do if we know the fisherman.

The Court: When you do that, do you thereby have a mortgage on the fish or a right that is superior as a dealer?

The Witness: No, not necessarily, your Honor. That is entirely up to the fishermen. We don't have him sign any note or anything. We feel it a moral obligation. We feel when we give him this \$10 or \$15 he is going to——

The Court: Ten or fifteen?

The Witness: Or twenty, whatever he may ask. Sometimes with lobsters we will give 100 or 200,—we have a pretty good idea that he is going to sell his lobsters to us. That does not bind him to sell to us.

The Court: What is the greatest amount of financing that you do?

The Witness: At one time we gave a fisherman money to buy a boat.

The Court: Once? How long ago was that?

The Witness: '43. [685]

The Court: Ordinarily is it just an advance of money?

The Witness: We went to the bank and we signed the note.

The Court: No. I mean ordinarily.

The Witness: I have lost you.

The Court: You say you give a man \$5 or \$10. Do you go to the bank for that?

The Witness: No, sir; no, sir. He doesn't sign anything. We know the fellow. There is no legal——
The Court: Go ahead.

- Q. (By Mr. Schwartz): Do you purchase fish or oyster or other crustaceans from points other than San Pedro?

 A. Yes, sir.
 - Q. Where do you make those purchases from?
- A. Those are bought through brokers; Seattle, Oregon, Alaska—Alaska is through Seattle; and Mexico, and then New Foundland, that is always through a broker.
 - Q. What is what?
- A. Through a broker, New Foundland, filets, frozen fish.
- Q. How is the transportation for those purchases of those fish from those places you have just mentioned handled?
- A. From Mexico they come on a refrigerated truck. It is brought to the dock and the broker, if I want to buy 500 pounds he will weigh out 500 pounds in a box and I will [686] bring it to my market. From Seattle and other points, it is usually by

(Testimony of John Louis Di Massa.) refrigerated truck, it is—we order 300 pounds of ling cod, it comes in two-hundred-pound boxes, it comes by express or refrigerated truck.

Q. That is from Mexico?

A. No. The fish from Mexico comes direct to the dock and then it is divided. But fish we buy from Seattle or Oregon, it comes through railway express or refrigerated truck and it is already ours. It is our fish as soon as it leaves—what I am trying to say is as soon as it leaves the market in Seattle or Oregon it is our fish. What comes from Mexico is not our fish until we get it off the dock.

Q. Mr. Di Massa, of the fish purchases which your company makes in the course of a year, what percentage of those purchases would you say come from points outside of the State of California?

Mr. Garrett: One moment, please, Mr. Di Massa. May I have the witness on voir dire?

The Court: Yes.

Voir Dire Examination

By Mr. Garrett:

Q. Does your copartnership have books?

A. Yes, sir.

Q. What do those books consist of?

Mr. Schwartz: If the court please, I object to any [687] reference to any books.

The Court: Objection sustained.

Q. (By Mr. Garrett): Do those books show the sales that you make in your business?

A. Yes.

Mr. Schwartz: I object to the question, if the court please, and to this general line of questioning relating to the books of this company.

Mr. Gerrett: This is voir dire, if your Honor please.

The Court: Yes, I know it is voir dire. That is the qualification of the witness to answer the question which counsel asked him, which was whether or not he knows how much fish he buys from outside of the State.

I don't think that is material. Objection sustained.

Mr. Garrett: If your Honor please, do you mean you are are not going to allow me to establish the fact that he has books?

The Court: Here is the general manager of this business; he testifies he keeps track of the sales and business and sells the fish, and calls the signals. Counsel has asked him what percentage of fish.

Mr. Garrett: If your Honor please——

The Court: That goes to the weight of his testimony, rather than his ability to answer the question.

Mr. Garrett: If your Honor please, I am in a position of having to make a record here, and it is necessary for me to bring out the fact that this man has books which give exactly the information he is now asked to give from memory in order to give any effect to my objection that what is being called for is not the best evidence. That is all I wanted to do. I know what your Honor's rulings are

going to be, but the record ought to be intelligible.

The Court: I think the record is intelligible up to now. You can cross-examine him on it. I think it goes more to the weight of his testimony, rather than to his ability to answer this question. The objection is sustained. Proceed.

Mr. Garrett: I will ask the rest of the foundation questions, for I feel that I must.

Q. (By Mr. Garrett): What is the name of your bookkeeper?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. '(By Mr. Garrett): What does your book-keeper do?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): Are your books here in this building?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): Do your books show the names of the [689] persons whom you purchase fish from?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): Do they show the location of those persons?

Mr. Schwartz: Same objection.

Q. (By Mr. Garrett): Do they show the amount of the purchases by customers?

Mr. Schwartz: Same objection.

Q. (By Mr. Garrett): Do they show the names of the persons who you sell fish to?

Mr. Schwartz: Same objection.

- Q. (By Mr. Garrett): And do they show the names and locations of the persons you sell fish to?

 Mr. Schwartz: The same objection.
- Q. (By Mr. Garrett): Is that true of both shipments inside of the State of California and shipments to points outside of the State of California?

Mr. Schwartz: Same objection.

The Court: Object sustained.

Mr. Garrett: I object to the question as calling for hearsay and not the best evidence. [690]

Mr. Garrett: If your Honor please, it is called to my attention that rulings by your Honor are probably not in the record as to all the questions I asked.

The Court: You didn't wait for them.

Mr. Garrett: I presume that I didn't. Will I have to go back and do it over again, or may the record show that you have sustained the objection?

The Court: If you feel that is the only way for you to make your record. But the objections were sustained to that line of questioning.

Mr. Garrett: Thank you, your Honor.

The Court: Your may answer the questions now. Do you remember it? Read it.

(The question referred to was reread by the reporter as follows:

"Q. Mr. Di Massa, of the fish purchases which your company makes in the course of a year, what percentage of those purchases would you say comes from points outside of the State of California?")

Mr. Garrett: I want to make a further objection, that no proper foundation is laid, and that the question by its [691] very wording calls for guessing and speculation on the part of this witness.

Mr. Andersen: Particularly to time, your Honor.

The Court: I think that, perhaps, a better foundation could be laid, as well as time.

Mr. Schwartz: What was the last?

The Court: As well as time. There is no time fixed in your question.

Direct Examination (Resumed)

By Mr. Schwartz:

- Q. Mr. Di Massa, were you at the L. A. Fish and Oyster Company in your capacity as general manager for the year 1945?

 A. Yes, sir.
 - Q. 1946? A. Yes, sir.
- Q. And during those two years do you know, as general manager of the company, the volume of business done by your company in fish purchases?

Mr. Andersen: May it please the court, I want

to make a further objection. The objection. The year 1945, as we see it, is completely immaterial. So far as we know these people were all doing business with each other during the year 1945.

Mr. Schwartz: I didn't get the last statement. As far as we know what? [692]

Mr. Andersen: So far as we know the people were doing business with each other in 1945.

The Court: What people?

Mr. Andersen: He was doing his business completely uninterrupted in 1945. The complaint here is an interference in 1946.

The Court: It says May, 1946, and sometime prior thereto.

This is all material as it goes to the alleged and asserted interruption in the free flow of fish to the market. So 1945 is not too remote.

Mr. Andersen: May it please the court, the indictment limits the time. It doesn't go into 1945 at all, may it please the court.

The Court: Beginning sometime prior to May, 1946, the exact date being unknown to the Grand Jury.

The objection is overruled. Answer the question.

Mr. Garrett: A further objection: no proper foundation, your Honor.

The Court: Objection overruled. That is a foundation question that he has asked. He just asked him now if he is familiar with the volume of fish. [693]

* * *

Mr. Garrett: At the risk of appearing to argue before the jury, I want to say my objection to the question is it doesn't contain the necessary foundation element in that it doesn't show on what basis or from what sources he knows.

The Court: Objection overruled. Read the question, the last unanswered question.

(The last question was read by the reporter.)

Q. (By Mr. Schwartz): That is 1945 and 1946?

The Court: Answer yes or no.

The Witness: In money, about \$200,000.

The Court: Do not answer the question, answer it yes or no first.

The Witness: Oh, yes, sir.

The Court: Do not say how much, just if you know.

The Witness: Excuse me. Yes, sir.

Q. (By Mr. Schwartz): What is the volume of business approximately that was done by your company for the year 1945 in fish purchases total inside and outside of California?

Mr. Garrett: Same objection.

The Court: Overruled.

The Witness: \$200,000.

Q. (By Mr. Schwartz): What was the volume approximately in 1946?

Mr. Garrett: Same objection.

The Court: Same ruling.

Mr. Garrett: Same grounds.

The Court: As I understand it, you object to this entire line of questioning?

Mr. Garrett: Yes, your Honor.

The Court: On the grounds you have heretofore asserted? [695]

Mr. Garrett: Yes.

The Witness: It was less than '45.

- Q. (By Mr. Schwartz): Approximately.
- A. Oh, about \$180,000.
- Q. Do you know, as general manager, on the information that you have told us that you had access to, what percentage of that \$200,000 approximately in '45 is represented by fish which came into your place of business from points outside of the state of California?

Mr. Garrett: Now I want to object further to the indefiniteness of that question and to point out to your Honor—as I said before it doesn't contain the elements—he asks whether the witness knows as general manager of the business what the proportion were of interstate and intrastate shipments, as general manager of the business. He doesn't ask, nor has it been shown, what basis the witness' answer to that question will be on so that we don't know.

The Court: I understand. That is the basis of your objection, and the objection is overruled.

The Witness: About 60 percent.

- Q. (By Mr. Schwartz): How much?
- A. 60 per cent.
- Q. And asking you the same question with relation to 1946, what is your answer?
 - A. 60 per cent, or 65 per cent—60 per cent.

Q. Mr. Di Massa, to whom do you sell, the Los Angeles Fish and Oyster Company, sell its fish and crustaceans?

A. We sell to—

The Court: I do not think he wants the names of your customers.

The Witness: The steamship, the Los Angeles wholesalers, and many retail stores in and out of the state.

* * *

Q. (By Mr. Schwartz): Are you familiar with the shipments of fish and crustaceans by your company to points or customers outside of [697] the state of California?

A. Yes, I am. Every night I check the sales book.

Q. Will you relate where those places are outside of the state of California that your fish and crustaceans are shipped to?

A. Colorado, Utah, Wyoming, Washington, Oregon, Arizona, and there may be others. Those are the most. Did I say Utah? And Nevada.

Q. Does that take in the bulk of your business outside of California? A. Yes, sir.

Q. Do you know, as general manager of the Los Angeles Fish & Oyster Company, the volume of sales by your company for the year 1945, total sales?

A. Total sales for '45 was—

Q. Just approximately.

A. I am quite sure they are \$325,000.

- Q. And do you know what the total volume of sales for the year 1946 is?
 - A. \$290,000.
- Q. Now do you know what percentage or proportion of the total sales for the year 1945 is represented by shipments to the points outside of the state of California?
- A. About a fifth or a fourth; 25 per cent or 20 percent. That is very close I think. [698]
- Q. And for the year 1946? A. The same. The Court: I think this is an appropriate time to recess.

* * *

Mr. Garrett: We wish to move at this time to have this witness ordered to bring in the books of his company on Monday morning.

Mr. Schwartz: And we object to the motion made by counsel.

The Court: The motion is denied. [699]

JOHN LOUIS DI MASSA

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Schwartz:

Q. Mr. Di Massa, I believe you testified that in the course of your business you purchased fish from points from up in Washington and Oregon, is that correct? A. Yes, sir.

- Q. How is that fish delivered to your place of business at San Pedro?
 - A. By Railway Express or refrigerated trucks.
- Q. What truck lines do you employ for that purpose?
- A. LACL Truck Lines, West Coast Truck Lines principally.
 - Q. West Coast Fast Freight?
 - A. West Coast Fast Freight; yes, sir.
- Q. I believe you testified that you also shipped fish to points outside of the state of California. What type of transportation or how is that fish transported to those points?
- A. Practically all by the Railway Express. [704]
- P. Q. HNow, how is that accomplished?
- A. After an order is put up and iced and sealed, the express agent comes and makes out a bill of lading and gives us a receipt and it is delivered to the dock, and they load it onto their truck.
 - Q. I didn't get the last.
- A. We bring it to the edge of the dock, and they put it aboard on their truck which is hauled into Los Angeles onto the various trains.
- Q. You say you run it to the edge of the dock; where is that?
- A. That is at San Pedro. The trucks back onto this dock.
- Q. That is on the land side of the fishermen's wharf?

 A. Yes, on the land side.
- Q. And then what happens?

(Testimony of John Louis Di Massa!)

- A. It is hauled into Los Angeles at the Union Station here, and segregated and shipped on various trains, wherever the destination may be.
 - Q. Handled by the Railway Express?
- A. After leaves our dock it is all handled by the Railway Express.
- Q. And with regard to the shipment of fish into the State, to your place of business, how is that accomplished?
 - A. That is delivered to our dock. [705]
 - Q. By the—
- A. Railway Express Company, or the truck lines.
- Q. How many employees do you have at the L. A. Fish and Oyster Company?
 - A. Now, or during the strike?
 - Q. No. Say in 1946, before May 29th.
 - A. Three.
 - Q. Three? A. Three.
 - Q. What kind of work do those people do?
 - A. Fish cutters, fish packers.
 - Q. Do you call them butchers?
 - A. Butchers.

The Court: How many employees did you say there were?

The Witness: Three employees, but one union butcher. There is one employee that just fixes boxes for shipment, more or less a handyman.

- Q. (By Mr. Schwartz): Is this in May of 1946?
- A. May of 1946 we had one union butcher.

The Court: It doesn't make any difference; I am not talking about the union; how many employees, how many people did you have working for you, that is what he wants to know.

The Witness: Three, your Honor.

Mr. Schwartz: Do you have facilities for freezing or refrigerating fish in your plant? [706]

The Witness: Yes, we have.

- Q. (By Mr. Schwartz): Will you describe the operation of that plant, please?
- A. Fish that is brought from the fishermen is cleaned, if it is not cleaned; if it is brought in clean, we pack it and store it away into our refrigerated boxes. That is fresh fish. But fish that we freeze, that is delivered to Union Ice Cold Storage. They freeze and glaze and storage.
 - Q. Is that at Wilmington?
 - A. At Wilmington, California.
- Q. For the operation of your ice plant, do you manufacture ice, or do you purchase ice?
- A. Our ice is purchased from the Union Ice Company in San Pedro.
 - Q. How do you get your ice?
- A. It is delivered right alongside the ice crusher by the ice man.
- Q. And that was the way your business was conducted up to May 29th of 1946? A. Yes, sir.
- Q. (By Mr. Schwartz): On or about May 29, 1946, do you recall that you were at your place of business?

 A. Yes, I was.

Q. Do you recall anything unusual at your place of business on that day?

A. Pickets in front of the market and a picket boat on the water-front side.

Mr. Margolis: If your Honor please, I move to strike the testimony on the ground it is incompetent, irrelevant and immaterial, no relation to any issue in this case; and ask that we may have a standing objection to this line of questioning with this witness.

The Court: Motion is denied, and the objection will be deemed to have been made to each and every question on this line, without its repetition, with the same ruling by the court. [709]

Q. (By Mr. Schwartz): Now you mentioned something about pickets in front of the place. Will you describe what you saw?

A. There was about 10 or 15 men carrying banners, demanding a living wage, something to that effect, no price, no fish, no contract, no fish—something like that. It was quite obvious the place was being picketed.

Q. It was what?

A. It was obvious the place was being picketed.

Mr. Andersen: Move that that be stricken as his conclusion and opinion.

The Court: Motion denied.

Q. (By Mr. Schwartz): Your place of business has a dock on the seaward side and a dock on the land side, is that correct?

A. Yes, sir.

Q. Where did you see these pickets?

- A. They were off the dock, they were on the road which our trucks travel to go back onto the dock.
 - Q. They were on the street, the road?
 - A. Yes, sir.
- Q. Did they do their picketing as you have described on that side or did they also go on the other side of the dock, on the seaward side?
 - A. They had a boat on the water in the harbor.
- Q. I am talking now about these pickets that you described carrying these banners.
 - A. On the dock, no. I didn't see any.
 - Q. The ones that you saw——
 - A. Were on the streets and the picket both.
- Q. I show you Government's Exhibit No. 2, and ask you whether that is the scene which you have described on the seaward side with relation to the boat.

 A. That is the boat.
- Q. I show you Government's Exhibit No. 1 and ask you whether you saw that scene enacted at your place of business?

 A. Yes, sir.
- Q. Are those the pickets that you saw on that date?

 A. Yes, some are very familiar to me.
- Q. Will you name them, the ones that you are familiar with?
 - A. The one referred to as Bunny.
- Q. Is he a defendant in this case, or is he in this courtroom?

 A. I don't believe so.
 - Q. Go ahead.
- A. And Otis Sawyer, and Chris, the gentleman back there.

Q. Who is that?

A. The gentleman between Mr. Zafran and Mr. Smith. [711]

Mr. Schwartz: Will you stand up, please? (The defendant Kennison stood.)

Q. (By Mr. Schwartz): Is that the gentleman you are referring to?

A. Yes, sir.

Mr. Schwartz: May the record show that the defendant Kennison was identified?

The Witness: That is all I see here.

- Q. (By Mr. Schartz): Now after May 29, 1946, did you or did your company obtain any fish from any of the fishermen at the wharf?
 - A. No, sir.
 - Q. And for how long?
- A. Until about the end of June or 1st of July, about five weeks.
- Q. Now during that time were you at your place of business? A. Yes, we were.
 - Q. You personally?
- A. I was there for the first three weeks—two weeks, first two weeks.
- Q. How frequently were you at your place of business in those first two weeks?
 - A. All day long practically.
- Q. Will you relate what you saw as far as activity on [712] the seaward side of the wharf is concerned of the fishermen's wharf?
- A. Well, this picket boat patrolled back and forth and there was no activity other than that.

- Q. Did you observe that there was any difference in the number of boats coming in with fish or tying up to the wharf is concerned?
 - A. There wasn't any fish; no fish was brought in.
- Q. Will you relate what you saw? Just state what you saw with relation to any activity on the landward side of the dock during this two-weeks period that you were at your place of business.
- A. The first day we were given so many blocks of ice to carry the fish that we had in the icebox.
 - Q. From whom? A. From the iceman.
- Q. All right. Did he bring it there with his truck?

 A. He brought it with his truck.
 - Q. Did you see his truck? A. Yes, sir.
 - Q. What else did you see?
- A. Fish was delivered for a couple of days after the pickets first were established, fish that was coming in, a day or so—I don't recall exactly.
 - Q. Delivered by whom?
- A. Well, the Railway Express or the West Coast Freight Lines.
 - Q. All right.
- A. And I believe a truck of sea bass from Mexico.
 - Q. That was when, the first few days?
- A. The first day, the day the pickets were established.
 - Q. And thereafter what happened?
 - A. Deliveries were stopped. [714]

* * *

- Q. Do you sell to any people retail?
- A. Yes, we do.
- Q. Do you sell to people who are fish peddlers?
- A. Yes, sir.
- Q. During those two weeks did you sell fish to fish peddlers? [715]
- A. We did for a couple of days but not the two weeks, maybe the first three or four days.
- Q. How do these fish peddlers get their fish at your place of business?
 - A. They came with their trucks.
- Q. During the month of June of 1946 did you have on order from points outside of the state of California shipments of fish to be delivered to your place of business—I don't mean June; I mean during the month of May?

 A. Yes, we had.

Mr. Andersen: Our same running objection to this line of questions.

The Court: Very well. Same ruling.

- Q. (By Mr. Schwartz): Now with reference to the situation which you have described which you say started somewhere around the 29th——
 - A. Just before Memorial Day.
- Q. Let's take the 29th of May. What, if anything, occurred with reference to those orders directly after the 29th of May? [716]

* * *

The Witness: They were delivered to the Union Ice & Cold Storage, and the Railway Express orders were left at the depot at Sixth Street.

Q. (By Mr. Schwartz): Sixth Street where?

A. San Pedro. And those that came by refrigerated truck, we had them routed to the Union Ice Company at Wilmington. Then we picked it up with our own truck. We went to the Union Ice and we went to the depot.

- Q. Union Ice at Wilmington?
- A. Yes, that is at Wilmington.
- Q. What did you do there?
- A. We brought them to San Pedro.
- Q. To your place of business?
- A. Yes, the first few days.
- Q. Then after that what happened?
- A. After about four days there wasn't any more business. The customers wouldn't come down to the dock any more. [717]

* * *

Q. With reference to the business of bringing in fish from points up north to your place of business, were there any orders on hand with those brokers or dealers that you did not get after the first four or five days in June of 1946?

The Court: What do you mean "up north?"

Mr. Schwartz: Washington and Oregon.

The Witness: I got them but not in San Pedro.

- Q. (By Mr. Schwartz): Where did you get them? A. Los Angeles.
 - Q. And for how long did that continue?
 - A. Until the strike was ended.
 - Q. Through the month—
 - A. Through the month of May, yes, sir.

- Q. Through the month of June?
- A. Yes, sir, through the month of May and June.
- Q. Where in Los Angeles did you get them?
- A. National Seafood.
- Q. The National Seafood Company?
- Q. Where are they? A. Pico and Central.
- Q. Are they wholesalers or retailers?
- A. They are wholesalers.
- Q. Now, with reference to the receipt at your place of ice from the Union Ice Company, will you relate what, if anything, happened in that regard at your place of business as to the continuance of the receipt of that ice?
- A. There wasn't any more ice delivered after the first [719] day, or possibly the second day, but not more than that.
- Q. Did any of the defendants visit your place on or about the 29th day of May with any representative of the ice company?

 A. Yes.
 - Q. Were you present at that time?
 - A. Yes, sir, I was.
 - Q. Will you relate what happened?
- Q. (By Mr. Schwartz): What is the name or names of the defendants?

 A. Mr. Smith——

Mr. Schwartz: Indicating defendant Smith. Will you stand up?

(The defendant Smith stood up.)

Mr. Schwartz: Is that the man you mean? A. Yes.

Mr. Schwartz: May the record show the witness identified defendant Smith.

- Q. (By Mr. Schwartz): Who else was present?
- A. With the ice man.
- Q. What is his name? A. Alfred Dodder.
- Q. Will you state what was said or what happened?

Mr. Margolis: We still object. There is insufficient foundation as to the place and time.

Mr. Schwartz: He said it was at his place of business.

The Court: Time of day?

The Witness: In the morning of the strike, of the 29th.

The Court: All right.

The Witness: We were asked how much ice we needed to take care of our fish that we had on hand.

Q. (By Mr. Schwartz): You say "We were asked"; who asked you?

Mr. Garrett: Objected to. No proper foundation laid.

A. Mr. Smith or the iceman.

The Court: Overruled.

Q. (By Mr. Schwartz): Go ahead.

The Court: Who else was present?

The Witness: My partner.

The Court: What is his name?

The Witness: John Joseph Demeglio.

- Q. (By Mr. Schwartz): So there were four of you?
- A. Four. There might be five. John Joseph Demeglio and I, we were asked.

Q. Describe what took place.

A. We were asked how much ice we needed to take care of the fish. [721]

The Court: Who asked you?

The Witness: Either Mr. Smith or the iceman, Mr. Dodder. How much ice we needed to take care of our fish which we had inside. And I forgot what we ordered. And we were told that was to be the final delivery of ice until the strike was settled.

Q. (By Mr. Schwartz): Who made that statement? A. Mr. Smith.

Q. (By Mr. Schwartz): By the way, are you here pursuant to subpoena?

Mr. Garrett: Same objection as before.

A. Yes.

The Court: Same ruling; objection overruled.

Mr. Schwartz: You may cross-examine. [722]

Cross-Examination

By Mr. Garrett:

- Q. Do you know Mr. Ross, one of the wholesalers on the warf? A. Yes.
 - Q. When did you last see him?
 - A. I saw him Saturday morning.
- Q. Did you talk to him about the testimony he had given in this case?

 A. No, sir.

Mr. Schwartz: If the Court please, that is objected to as outside the scope of the direct examination.

The Court: About the testimony he had given?

Mr. Garrett: He, Ross. [731]

Q. Did you talk to Ross in connection with the meeting of any association of fish wholesalers on the Los Angeles Municipal Wharf?

Mr. Schwartz: Same objection.

The Court: Same ruling. Objection sustained.

Q. (By Mr. Garrett): Have you or your concern ever been a member of the fish exchange in San Pedro?

Mr. Schwartz: Objected to, first of all, on the ground it is outside of the scope of the direct examination; and it is immaterial to the issues in this case.

Mr. Garrett: Preliminary, your Honor.

Mr. Schwartz: I further object on the ground that as far as it being preliminary is concerned, that the answer will certainly not be preliminary as far as getting over to the jury what Mr. Garrett is trying to get over to the jury. [732]

The Court: I think it is immaterial. The objection is sustained.

Mr. Margolis: I would like to make a sugges-

tion that may be acceptable to the court and to counsel for the government. As has been indicated, we do object to all testimony concerning boycotting, picketing, and other economic activities in connection with the obtaining of this agreement. We know what the court's rulings have been, and our objec(Testimony of John Louis Di Massa.) tions have been made simply for the purpose of preserving our record.

The Court: I understand.

Mr. Margolis: We would be perfectly satisfied if we had [764] a running objection to that entire line of testimony, to not continue making those objections and take up the time of the court. We know what the ruling of the court is going to be; we don't wish to argue it any further. It seems to us it would save time.

The Court: I think that should be agreeable. I don't think counsel should be under necessity of stating their objection each time, if some stipulation can be framed to protect the record in that respect. It is certainly agreeable to me. [765]

Mr. Margolis: Well, concerning the picket line, boycotting and any other economic activity of the defendants or persons acting in association with them for the purpose of obtaining the signing of the contract, which is in evidence as Government's Exhibit No. 3.

The Court: Do you anticipate to have testimony concerning similar activity at other ports?

Mr. Dixon: Yes, your Honor, particularly the port of Newport.

The Court: But also San Diego and Santa Barbara?

Mr. Dixon: Not particularly in those ports, your Honor, because there it was handled in a little different way. The situation under the indict-

ment as far as these activities are concerned is that we are going to limit the evidence generally to Newport and San Pedro.

Mr. Margolis: I would suggest that if it may be stipulated by Government counsel that the objection to all such evidence may have been deemed to have been made on the ground that it is immaterial, irrelevant and has no relation to any issue in this case, we would then make specific objections, however, of course reserving out right to object to hearsay and other matters not covered by this stipulation. [766]

The Court: Yes, but your general objection to the entire line of testimony is that it is incompetent, irrelevant and immaterial.

Mr. Margolis: It has no relation to the issues in this case.

The Court: Is that agreeable?

Mr. Dixon: Yes, your Honor I think we can agree to that.

The Court: From the evidence so far in the case I do not see any—I was looking again at the instructions this morning—it would seem to me that I would have to instruct the jury in the event the case gets that far that the admission of evidence concerning strikes and pickets are only admissible to go to the question as to whether or not there was a previous agreement. In other words, the defendants are not being tried for picketing or for striking.

Mr. Margolis: Your Honor please, we would be willing to agree that if the evidence is offered solely for that purpose that it would be admissible, but if it is offered for any other purpose, that is what we are trying to protect our record on.

The Court: For showing the agreement.

Mr. Margolis: If it is offered for the purpose of showing that by their subsequent activities that the jury may draw an inference that they were parties to the original [767] agreement, then we should think the evidence would be admissible for that purpose.

The Court: That is the basis that I have been admitting it all on.

Mr. Margolis: There has been no limitation upon it, however, and if that is going to be the instruction of the Court of course we think that instruction is correct.

The Court: That has been going through my mind. They are certainly not charged with picketing. There is no Federal offense for picketing. There is no offense for striking. The only offense charged is the conspiracy to restrain the trade in fish. That is the only evidence that it can be material to.

Mr. Margolis: May I state this, during the course of the argument on the motion to dismiss, it was at least my understanding of the Government's argument that they had two theories; one was that the agreement itself violated the law, and that in any event the subsequent activities to obtain the agreement independently violated the law.

The Court: I did not so understand the Government's position.

Mr. Dixon: Does your Honor want to hear our position on this whole general question at this time?

The Court: I would like to have some idea on that particular thing, whether or not it is your position that the [768] strike itself is an illegal thing other than merely evidence of the asserted conspiracy.

Mr. Dixon: I have some notations here on my indictment with reference to that which I think goes directly to it.

The Court: The charging part of the indictment is that "the defendants (together) have knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out * * * to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish * * *"

Now that is the charging part of your indictment. Mr. Dixon: That is right.

The Court: And all the rest of it in Paragraph 13 has consisted "of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree to fix minimum prices * * * agree with respect to all types of fresh fish," and so on down the list.

Do you wish to make a statement or am I in error?

Mr. Dixon: No, your Honor. I think the materiality of those allegations will appear from 144 F. (2d) at 833. The case is in point at 824; and 137 F. (2d) 464, where the Court held in that particular part of the decision—that was the A & P case—that that the result to be achieved is what the statute condemns.

The Court: The A & P case is the second one. What is [769] the other one?

Mr. Dixon: The other one is 144 F. (2d). I don't have the title here. Your Honor caught me sort of off base here. I am not prepared to discuss it except I can give you that reference. I don't know the title of that case.

The Court: Is it the general idea that all this evidence of their acts and conducts in connection with the picketing and the actual strike and so on and so forth, is offered for the purpose of showing the conspiracy?

Mr. Dixon: That is right. This is a conspiracy case, your Honor.

The Court: I cannot see what else it would be admissible for.

Mr. Margolis: It shows the conspiracy to do what, your Honor.

The Court: A conspiracy to restrain this trade in fish. Now they can show that by showing, if they can ever get a photograph of people present sitting around the table, but they showed what they did. What did they do? They did restrain the sale of fish. That is I suppose their theory.

Mr. Margolis: I am a little confused at this point. I think there are two possibilities: one possibility is that that evidence is introduced simply for the purpose of showing that these defendants were parties to an agreement among the fishermen to obtain a price-fixing agreement. That is one possible theory.

Another possible theory is that the activities in and of themselves were wrongful and were part of the wrongful acts complained of.

Now if the evidence is offered for the former purpose, merely for the purpose of showing that these defendants were parties to an agreement to fix prices, we would have no objection to the evidence.

The Court: It is an agreement to restrain trade, I think, counsel. Whether it is to fix prices, it is an agreement to restrain trade under the Sherman Act.

Mr. Kenny: Pardon me. I think it is this way: It is an agreement to fix prices. It may, as a matter of law, turn out that the agreement to fix prices restrains trade.

The Court: As far as I am concerned now and until the matter gets down further, it is an agreement to restrain trade. Now they restrain trade by fixing prices or something else, but it is an agreement to restrain trade, and a conspiracy to do that. They are not charged with the restraint of trade. It is an agreement to restrain trade and a conspiracy to do that.

Mr. Margolis: Let us let the record stand.

The Court: Let us look at the cases during the noon hour.

Mr. Kenny: I have one other thing that we can be thinking [771] of during the noon hour, that goes to this: It would be equally material on the same theory of law as to whether or not the trade was actually restrained, that is, the business, so this matter of whether a man sold less fish or X fish is not material.

The Court: Except to show that that was the purpose of the agreement. You can show that the purpose of a person buying a gun is to kill somebody by showing he did kill somebody.

Mr. Kenny: If he is merely accused of buying a gun to kill somebody, you wouldn't have to show that he killed somebody.

The Court: But you could.

Mr. Margolis: I think that gets us down to this, if we understand—let me start over. Perhaps I had better do it after recess.

Cross-Examination

By Mr Kenny:

Q. Mr. Di Massa, last Friday afternoon the Court asked you (page 685 of the transcript): "Did you ever finance any fishermen for a portion of the lay?" And you answered "Yes."

The Court said: "The lay is what they call the catch?" And you replied, "Or the equipment for paying their grocery bill or fuel bill."

Do you remember that conversation?

A. Yes, they would ask for help and we would give it to them.

- Q. And you said you made various loans of \$10 or \$15 to various fishermen? [787] A. Yes.
- Q. Is that a general practice there on the fishermen's pier among your other fish dealers?
 - A. I don't know.
- Q. To your knowledge are you the only dealer who makes such loans?
- A. All I can answer is for my own company, sir. I really don't know.

* * *

- Q. Then you make those loans, if the fisherman had doctor bills or a death in the family or a birth in the family, that is some of the purposes for which you make those loans, is that right, Mr. Di Massa?
 - A. If he is hard up; sure.
- Q. If there is a storm and he loses part of his equipment, why you make such a loan, don't you?
- A. Not generally. It is once in a while. It is not as a rule. Not every fisherman.
- Q. I realize that, but if he is hard up, as a result of some loss at sea, you help him out, isn't that right?
 - A. I can give you one example.
- Q. Fine.
- A. The last time I loaned money to a fisherman he had to buy a battery. His boat had blown up and he got burned and had to go to the hospital. While he was at the hospital they looted his boat, and I believe we gave him \$50 for getting his battery equipped again. I have seen the fisherman but he has never sold me fish since.

- Q. How about the fishermen, are they slow pay or good pay?
- A. Not necessarily. I have enjoyed bery good relations with the fishermen.
- Q. I was just wondering as a credit risk, but I suppose like other credit risks it depends on their financial conditions whether they can repay you promptly or slowly, is that right?
 - A. That is right.
- Q. And if there is a season when, say, the albacore are not running or barracuda are coming in late, seasons like that when there is just no fish in the sea, then they are pretty slow pay, is that right?

Yes, sir.

- Q. And if there is a season where fish is shipped in from other ports, from the north or south or Mexico, and the [789] price of fish is low, why then they are slow pay under those conditions too, aren't they?
- A. Well, fish at other ports don't necessarily hinder them catching fish.
- Q. What I assumed was that fish coming in, fish caught elsewhere being shipped into the Los Angeles market, that causes a drop in price?
- A. That is all it does. It regulates the price. If more fish is caught up north, that is, of the same species as caught down here, why naturally it is going to hurt their price because there is competition with the north.
- Q. And as a result you don't get your money back as fast?

A. Well, sir, we don't loan enough to the fishermen to worry about that. When I say we give them money, it isn't a general practice.

The Court: How many loans have you made in the last two years, for instance?

The Witness: One.

Mr. Kenny: I was going to compliment the witness on his generosity.

The Witness: That is the last time I was asked for it.

Q. (By Mr. Kenny): You told the Court that you financed the fishermen for a portion of the lay. Now can you tell me—and then it [790] went on to say the lay was the catch—now can you tell me just what arrangement you make for security on your loan?

Mr. Schwartz: Now, if the Court please, I object to the question on the ground that this witness has stated that he has made just one loan in the last two years.

The Witness: I will retract that, sir.

I bought some albacore jigs for Tommy Sawyer prior to the strike.

The Court: You bought some albacore jigs?

The Witness: Yes.

The Court: How much?

The Witness: \$5 or \$6 or \$7.

The Court: How many loans have you made in the last three years?

The Witness: Not enough to worry about.

The Court: Has it been three or four loans?

The Witness: In the last three years, yes, sir, I imagine so. I know of two. One was the fellow whose boat burned and——

The Court: One was for \$50.

The Witness: And Mr. Sawyer, he never did get his jigs. I bought the jigs and then the strike came and that was the last I saw of him.

The Court: You still have the jigs?

The Witness: No, I sold them to another fisherman. But [791] the idea was, your Honor, that——

The Court: Then you did not advance the money to Sawyer?

The Witness: No, but that was the general practice, if he needed the jigs I would give them to him, and if he came with fish and sold me fish and he wanted to take off the \$5 or the \$10, I would do it; if he wanted to keep it until the next time, that was up to him. He didn't have to sell me his fish.

The Court: I think what counsel is getting at, and what prompted my question, was whether or not it was a general practice where fishermen came in and said, "I need a substantial sum of money and I will give you a share of the lay," that is, a portion of the catch, 50 per cent of the catch?

The Witness: That was a practice before but not in the last three or four years. They have been very successful in fishing.

The Court: How long did that practice continue?

The Witness: That practice has been going on I guess since—

The Court: How long ago did it stop, would you say now?

Mr. Kenny: I hate to object to your Honor's question, but I don't think he has testified that it stopped generally.

The Court: He said up to three or four or five years ago.

How long ago ? [792]

The Witness: What I am trying to say, your Honor, is that the fishermen have been successful in the last three or four years and he doesn't have to come to the markets for any stake or anything like that. Just as in the case of this fellow whose boat blew up and he lost his equipment.

The Court: And you gave him \$50?

The Witness: Yes. And he hasn't sold me any fish since. I had no claim on his catch unless I wanted to bring him to court, I guess. That is a different story.

- Q. (By Mr. Kenny): Mr. Di Massa, you know about the boat Volga, don't you?
 - A. Yes, sir.
 - Q. Isn't Bill Baxter the operator of that boat?
- A. That boat was sold a year and a half ago or two years ago.
 - Q. Wasn't he the operator of the boat?
 - A. Yes, he was.
 - Q. You bought that boat, didn't you? [793]
 - A. Yes.

- Q. And then you let Bill Baxter operate it, isn't that right?
- A. That is right. Do you want the years? It was prior to the question I was asked.
- Q. No, I am just asking you about the transaction with Mr. Baxter.

* * *

The Court: While he is at it, you may explain your answer. How long ago was it?

The Witness: We bought that boat I believe three years ago.

The Court: How long did you have it? The Witness: We had it about a year.

The Court: All right. [794]

Q. On the boat Volga, will you tell us in your own words the financial arrangements you made with Mr. Baxter about his purchase, how you finally

sold it or how it was done? Just explain it to us.

The Witness: Mr. Baxter had his eyes on this fishing boat Volga, and he had, I think, \$1000. He didn't have enough money to buy the boat outright, so he came to us.

- Q. (By Mr. Kenny): Did you own the boat?
- A. He owned the boat. It was in his name. Everything was in his name. It was just that he made a note to us. I believe it was for \$2000. I don't remember exactly. He didn't have enough money to pay the full amount of the balance of the boat.
- Q. What was your agreement as to how he was to repay the note?

The Court: I understood you to say that you bought the boat from Baxter.

The Witness: No. your Honor. Mr. Baxter wanted to buy [796] a boat and he did not have enough money to buy it.

The Court: And you helped Baxter buy the boat?

The Witness: Yes, sir.

The Court: And Baxter later sold the boat?

The Witness: Baxter later sold the boat.

The Court: But he did not sell it to you?

The Witness: No, sir.

The Court: All right.

- Q. (By Mr. Kenny): Now what arrangements did you make with Mr. Baxter to repay the money which you advanced him to buy the boat? Was he to give you a portion of his catch?
 - A. No.
 - Q. What arrangement was made?
- A. There was nothing in writing that he had to. He didn't have to give us a portion of his catch.
- Q. I don't care whether it was in writing or not. I think what we want to know is what the arrangements were, whether they were in writing or oral.
- A. He sold us a portion of his catch, as he did to other dealers.

The Court: He wants to know whether it was tied into the matter of your financing the purchase of the boat.

The Witness: No, sir.

The Court: What did you do? Did you give him some [797] money and he gave you a note or did you take a mortgage on the boat or did you take a mortgage on his lay, or what did you do? What was the arrangement? Or did you just loan him the money and say "All right"?

The Witness: No, I believe he signed the note.

The Court: And a mortgage?

The Witness: I don't think the boat was mortgaged. He just signed the note.

The Court: He just signed the note?

The Witness: I don't remember exactly.

The Court: Did you have any agreement with him in connection with that transaction that he had to sell his catch to you?

The Witness: No, sir.

The Court: Or any portion of it?

The Witness: No, sir.

Q. (By Mr. Kenny): If he sold his catch to anyone, you or anyone else, did you get a portion of the proceeds of that for the advance you made on the boat?

A. I think not. I will have to correct myself on that.

You see, this transaction was between dad and Mr. Baxter, that is, I had nothing to do with this part of buying the boat. I think we own half that boat now, and Bill Baxter borrowed money from us for the rest of his share. He had [798] half and we had half, and we gave him some money plus his other cash to pay his share.

Q. Well, then, the proceeds as the various catches came in, were they divided between you as part owner of the boat, is that your testimony?

A. Yes, sir. [799]

* * *

The Court: The jury is instructed to disregard the statement of Judge Kenny.

What was the deal you made with this fellow and what is it now?

The Witness: The fellow wanted to buy a fishing boat. He didn't have money. He had a thousand dollars. I think the boat at that time was \$4,000. We bought half of the boat and he bought the other half. He owed us the thousand dollars himself. Then at the end of the month when he made his figures, the part that we owned, the half share of the boat, we received that.

The Court: That is to say, you didn't pay him for the half of the catch?

The Witness: No.

The Court: Or the half of the lay?

The Witness: Oh, yes, sir. We paid him. [800]

The Court: For the whole lay?

The Witness: I don't understand you.

The Court: The whole catch? Every time he came in?

The Witness: No, sir, we didn't buy his whole catch. Sometimes we didn't buy any of it. We bought the fish as we needed it.

The Court: Sometimes you didn't buy any?

The Witness: Sometimes we didn't buy any of his catch. Then when he would make his figures and after taking out social security and expenses and the share with his fishermen, he would give us a statement of what the boat cost for the previous month or week.

The Court: And half of that was yours?

The Witness: Not half of the catch, half of the boat's share. But that did not come out of the fish.

The Court: How many men did he have on this boat?

The Witness: I don't know. He always had one or two.

The Court: Did they share the lay or were they employed?

The Witness: We just bought the boat. I don't know about the equipment. The equipment to fish Baxter bought that, the fishing gear.

The Court: When he would take a man out to fish with him, would they share the catch equally? The Witness: I don't know. I know it was on a

share basis but how it was done, I don't know.

- Q. (By Mr. Kenny): Your share was determined after what other shares had been taken out?
- A. All we got was the boat share, half of the boat share.
- Q. Will you explain what the boat share was? That is, what percentage of the proceeds of the catch or lay did the boat get?

A. I don't know exactly. If you got \$100 worth of fish, they figure how much gas they bought, and that was deducted, maybe it was net \$90, and I imagine each fisherman got a share, Mr. Baxter maybe got two shares as being skipper, and the boat got a share. Say there was \$90 and there was nine shares, the boat share was \$10. Out of that \$10 we received \$5, because we only had half of the boat.

- Q. You got \$5 for the money you put in it?
- A. That's right.
- Q. And Mr. Baxter got---
- A. I imagine \$20.
- Q. \$20 for the work that he put in catching the fish, is that right, and each of the other fishermen got \$10 a piece for the work they put in?
 - A. As an example, yes, sir.

The Court: Pardon me. Are you familiar with what they call sharing the lay, a fisherman goes out and a boat gets so much and net gets so much?

The Witness: Yes.

The Court: Will you explain that general idea to the jury?

The Witness: I have never been a fisherman myself, but I have the family in the fish industry, my father-in-law was fishing captain, and my cousin is in the fishing industry, and it is all on a share basis. If the boat catches a thousand dollars worth of fish——

The Court: Wait. Suppose a man owns a boat, but he isn't a fisherman?

The Witness: All he gets probably is——

The Court: Wait a minute. Suppose there is a man who owns a boat and he isn't a fisherman, and then he has to have a man who is captain of the boat and he has to have three in the crew, and a cook——

The Witness: Yes, you have to have the cook.

The Court: What is that?

The Witness: You have to have the cook.

The Court: Yes, you have to have the cook. You have three in the crew and the cook, that is four, and the captain is five, and the boat is six.

The Witness: It depends on the size of the boat.

The Court: Suppose it is a boat big enough to have that crew. For example, would that be divided into ten shares,—the boat would get so many shares?

The Witness: Your Honor, if you had five men on the boat, the boat would demand two shares, because it would be a bigger boat. It depends on the size of the boat.

The Court: The thing is divided into a certain number of shares,—it might be ten, or seventeen, or it might be nineteen?

The Witness: Exactly.

The Court: Then among the crew, and the boat, and the equipment, and the cook—

The Witness: Yes, sir.

The Court: ——they divide up that catch when it come in, is that correct?

The Witness: That is the way I understand it. That is the way I am quite sure it is done.

The Court: So if there were ten shares the boat might get two-tenths?

The Witness: Yes.

The Court: And the captain might get twotenths? The Witness: Yes.

The Court: And the cook might get one-tenth, and the rest of the crew might get one-tenth each of the total proceeds from that catch?

The Witness: Yes, sir.

The Court: Is that generally a description of the custom? [804]

The Witness: Yes, sir.

The Court: What they call sharing the lay?

The Witness: Yes, sir.

- Q. (By Mr. Kenny): All right. Now let's talk about the cook, he goes out on that boat and cooks and prepares the meals?

 A. No.
 - Q. What else does he do?

A. Well, he has got the worst job on the boat.

The Court: Well, what else does he do?

The Witness: He works with the men.

The Court: You mean he is a fisherman?

The Witness: Yes, primarily a fisherman.

The Court: Fisherman and cook, too?

The Witness: Yes.

Q. (By Mr. Kenny): He is kind of a second-class fisherman?

- A. Yes, second-class fisherman and first-class cook.
 - Q. All he does is work on the ship, is that right?
 - A. Yes.
- Q. (By Mr. Kenny): If they go out to sea and they don't catch any fish at all, what does the cook get for his work on [805] that voyage?
- A. As far as I know he doesn't get anything. He is on a share basis.
- Q. And if they go out to sea and they catch some fish, but they come back and they can't find anybody to sell it to, what does he get paid for it?

The Court: * * *

If they can't come back and sell the fish, what do they get?

The Witness: The cook gets as much as the other members of the crew get. If they don't get anything, he doesn't get anything himself.

- Q. (By Mr. Kenny): If the fish are sold for a price that doesn't pay for the gasoline, which you say was taken out first, there is nothing to be shared, is there, on that particular voyage?
 - A. That's right.
 - Q. So the cook gets nothing, is that right?
 - A. To the best of my knowledge, that is.

The Court: That is argumentative.

The Witness: I never owned a fishing boat. That is all—— [806]

The Court: That is all. I don't mean that is all of the question, but that is all for that one.

- Q. (By Mr. Kenny): So when you went into this venture, say there is a \$100 catch, you got \$5 back for the money you had advanced?
 - A. Yes, as an example.
- Q. And the other people got shares based on the labor that they had advanced on that voyage, is that right?
- A. The \$5 was part of a share, too. It was all a share basis.
- Q. And if the trip was a failure either in the matter of prices returned or fish caught, why, none of you got anything?

* * *

A. That's right.

The Court: Did you enter into any similiar arrangement with any other boat or fisherman, or have you within the last five years?

The Witness: No, sir; that was the only boat.

- Q. (By Mr. Kenny): At no time during the last five years,—is it your testimony that these fishermen to whom [807] you made advances of money, you did not require any of them to give your firm a prior right to the fish that they caught, at no time during the past five years?
 - A. No.
- Q. Do you know of any other instances where that was required in the past five years by dealers on the wharves?

Mr. Schwartz: I object to this as calling for hearsay testimony, if the court please.

Mr. Kenny: He is an expert, your Honor. The Court: Do you know of any instances?

The Witness: I can't say, I can't say; I don't know.

* * *

The Court: No. Have you ever heard of anybody doing that down there, advancing money and getting a share of the lay for it?

The Witness: I don't know if anybody ever advanced the money and getting a share of the lay. I know they advanced money, because this particular boat I gave \$50 to that [808] burned up, somebody else gave money, too. As far as contracting for the fish they caught, I don't know.

Q. (By Mr. Kenny): I see. Do you know of any instances where a fisherman who was a debtor to a creditor-dealer was obliged to accept whatever price the dealer offered?

* * *

The Witness: No, sir, I don't know.

Q. (By Mr. Kenny): you know of no case where the fisherman was obliged to offer his fish first to a creditor-dealer?

A. No, sir.

The Court: Excuse me. What is the custom in that business about settlements,—weekly or monthly or semi-monthly?

The Witness: Your Honor, they can get paid any time they want, when they sell us the fish. They can get paid cash right now if they want it.

The Court: Is there any custom? For instance, in the restaurant business all due bills are payable Saturday.

The Witness: We like to have them come on Mondays, the following Monday, for their check.

The Court: At least by the following Monday? The Witness: Yes. But if they want the cash then, or check, we give it to them.

The Court: That is generally the custom in the business?

The Witness: I imagine it is.

- Q. (By Mr. Kenny): Do you have any connection with the Independent Fish Company?
 - A. No, sir.
 - Q. Is that a company on the pier there too?
 - A. Yes, sir.
 - Q. Is it run by any relatives of yours?
 - A. Yes, sir.
- Q. The total frontages of those, just to get the physical picture, how long is that wharf, that fisherman's wharf, in San Pedro?
 - A. The whole wharf?
- Q. Yes. What is the space occupied by the frontages of all the fish dealers?
 - A. Each market?
 - Q. Yes, about how many feet?
- A. About a forty-foot frontage. It depends. We have three stalls. The stall, I think, is about 35 or 40 feet. Our particular market has three stalls, which is about 120 feet wide. The next door to us has two stalls, next to him has one stall.

- Q. And all the dealers are just side by side right there [810] on the pier?
 - A. Yes, they are all neighbors.
 - Q. And friends?
 - A. Sometimes.
 - Q. And relatives?
 - A. They are not very good friends, relatives.
- Q. Last Friday, in answer to a question by Mr. Schwartz at page 680, line 10 of the transcript, you said:

"When the fisherman brings in his catch, I have an idea what I can pay for it; if I could buy it at that price and make a profit, I buy it; if he wants too much, I just don't buy it."

Now, first, how do you form your opinion that that is too much?

- A. I figure what the cost would be to handle the fish and what I could receive from my customers.
- Q. In other words, you figure what the amount of markup is that you would have to make or put on the fish that you buy, and determine whether or not if that mark-up, added to what you paid, would permit you to sell to your customers, is that right?
 - A. Yes, sir.
- Q. Can you tell me what your customary markup per pound is on the various principal species of fish that are handled? [811]
- A. Well, that depends on the type of sale. You take a wholesale sale, by that I mean a fellow that will buy a thousand pounds of one kind of fish, you

figure four cents is a fair mark-up. We will have peddlers that come in there and buy 150 pounds of fish, of six or seven different varieties, and then we supply them with their ice, free ice for their little peddler wagons—we have to figure six cents mark-up. Shipping out, about five cents, because you have your box—well, it is also small amounts, maybe it is three or four different types.

- Q. Was there a fixed mark-up during the O.P.A. period? A. Yes, sir.
 - Q. What was that?
- A. It ran pretty close to how we operated. That is, a wholesaler was about three cents, and then stock trucks four cents, and retail stores five cents.

The Court: Is that generally, or is that true altogether?

The Witness: Under O.P.A. that was one blanket set-up. That was the price.

- Q. (By Mr. Kenny): About how many pounds of fish can you store in your own icing plant?
 - A. Fresh fish?

* * *

- Q. Well, assuming whether it is fresh fish or coming [812] from a truck, it would be the same kind of storage facilities required?
- A. We have frozen fish and the fresh fish; we have two different boxes.
- Q. Well, what are your total storage facilities for fish of both kinds?
 - A. Fresh and frozen?

- Q. Yes, all kinds.
- A. I guess about 18, 20—20,000 pounds.
- Q. About 10 ton?
- A. Yes, about 10 ton. That is fresh and frozen.
- Q. Do you have any cold storage facilities elsewhere?
- A. Yes, we rent space from Union Ice & Cold Storage in Wilmington.
- Q. What is your storage capacity there that you rent? A. That is almost unlimited.

The Court: You mean that varies according to your needs?

The Witness: We also store fish at L. A. Ice in Los Angeles. We can store all we want, 100 tons if we want.

The Court: Do you have a permanent storage capacity there?

The Witness: No, sir.

The Court: Does it vary with the amount of fish you have? [813]

The Witness: It varies with the amount of fish we have. We are charged by the amount of fish in storage. We don't rent a certain space.

- Q. (By Mr. Kenny): So you are protected by your storage facilities if there is a glut of fish on the market, you can hold it until that surplus has been sold off, can't you?
- A. What we have in storage is very little fish we get in San Pedro. We store mostly the fish from the north, halibut and salmon, that is, northern halibut.

- Q. The reason for that is that the fishermen of San Pedro have no facilities for storage?
 - A. Yes, they do.
- Q. These individual fishermen, these fishermen who are here, do they have facilities for storage?
 - A. There is nothing to prevent them.
 - Q. Do they have them?
- A. No more than we have. Union Ice and Cold Storage is a public storage.

* * *

Q. (By Mr. Kenny): If the reason that you store mostly out of Los Angeles fish, fish coming from other areas, if you store that and you don't store the local fish, is that the [814] local fish, if it is not sold and the seller has no storage facilities, he has to sell it at a lower price?

* * *

A. No, sir.

The Court: Let me ask you this question: Generally is the fish which is shipped in here from other ports or areas competitive with the fish that is caught out here and landed at San Pedro?

The Witness: Yes, sir, definitely.

The Court: Is it the same fish?

The Witness: Not the same fish, your Honor, but it still is competitive with this fish, because it is fish.

The Court: It is fresh fish?

The Witness: Yes, fresh fish.

The Court: Do you ship barracuda?

The Witness: Well, we will buy barracuda through San Diego if there is no barracuda in San Pedro.

The Court: Do you ship in barracuda from Seattle?

The Witness: There is no barracuda caught in Seattle.

The Court: No barracuda?

The Witness: No.

The Court: What comes in from there,—mostly halibut? [815]

The Witness: Halibut, salmon, ling cod, black cod, true cod, filet of sole, filet of flounder. That all affects the price of fish down here. They ship to L. A. wholesalers. We have to compete with that price to sell our merchandise. You see, the Seattle just doesn't ship to San Pedro; they will ship to Los Angeles wholesalers, which are our customers, and Washington-Seattle fish is a competitive fish with ours.

The Court: In the fish business all fish is competitive with all other fish, is that the idea?

The Witness: Yes, sir.

Q. (By Mr. Kenny): And competitive with pork chops and lamb chops?

A. It is.

Q. And eggs and cheese, isn't that right?

A. It is.

The Court: Well, there are a lot of people that eat fish on certain days of the week and they don't eat pork chops on certain days of the week, so on those days it is not competitive.

Q. (By Mr. Kenny): I gather—you mentioned all this fish shipped in from the other areas into the Los Angeles market, the fish that is consumed in the Los Angeles market—wouldn't you say that about three times as much of it is shipped into the market from other places than comes in from [816] this Southern California area?

Mr. Schwartz: Wait a minute, your Honor. May I have that question read?

The Court: Yes, you can. He is asking him, in essence, if there isn't about three times as much fish sent in as there is caught in San Pedro. Isn't that right?

Mr. Kenny: Yes. I said three times, but isn't it about four to one?

The Witness: I think you are quite right on that.

Mr. Kenny: I think I am about through, your Honor. Thank you, Mr. Di Massa.

Redirect Examination

By Mr. Schwartz:

- Q. You testified you were present at a meeting with Zafran and two or three other dealers, or three or four other dealers, is that correct?
 - A. Yes, sir.
- Q. And at that meeting the question of a contract was discussed, is that correct?
 - A. Yes, sir.

- Q. Was anything stated at that meeting by Mr. Zafran as to what would happen to the dealers if the contracts were not signed?
- A. No more fish would be brought into San Pedro until a contract was signed.
 - Q. Do you remember the exact words he used?
 - A. I can't remember the exact words.
 - Q. Was that the substance of it?

A That was the general idea, that if we didn't sign the contract there—

The Court: There was a meeting before—
The Witness: Before the strike. The meeting we had in Zafran's office

Mr. Anderson: Pardon me. When was that meeting?

The Court: He said it was before the 29th. And he testified in his cross examination, as near as I can understand his fixing the date as being about May 27th.

The Witness: Yes, a couple of days before.

Q. (By Mr. Schwartz): Mr. Di Massa, you were asked about having spoken to Mr. Ross, and you mentioned having been up in room 1602 of this building. You have been waiting around this court room for several days, have you not?

Mr. Anderson: To which we will object, if your Honor please, as being incompetent, irrelevant and immaterial.

The Court: It was brought out on cross examination about where he was staying up in 1602.

Mr. Anderson: The question was whether he was there, may it please the court It may be that the gentleman waited up there two or three days, it may well be.

Mr. Schwartz: I am asking him.

The Witness: Yes, sir.

The Court: He answered the question. He said yes, sir.

The whole thing is trivial, whether he was in 1602 or whether he has waited several days.

Mr. Anderson: We think the whole thing is trivial, your Honor.

Mr. Schwartz: They asked about it; we didn't, your Honor.

The Court: Is that all?

Mr. Schwartz: Yes.

NELLO CASTAGNOLA

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

... The Witness: Nello Castagnola.

Direct Examination

By Mr O'Malley:

Q. What business are you in, Mr. Castagnola?

A. Fish industry; fisherman.

- Q. How long have you been in that business?
- A. Since last February.
- Q. What were you doing prior to that time?
- A. I was in the Army.
- Q. How long were you in the service?
- A. Two and a half years.
- Q. Prior to that time had you done any fishing?
- A. No.
- Q. So when you came out of service around January of 1946, is that correct?
 - A. That is correct.
- Q. Directing your attention to the first week in June of 1946, were you doing anything at that time with reference to going fishing?
 - A. I was just fishing.
 - Q. You were fishing at that time?
 - A. Up to that time; yes, sir.

Q. What did you fish for, Mr. Castagnola, what type or kind?

- A. I was fishing for barracuda.
- Q Fresh fish?
- A. For the fresh fish markets.
- Q. Where did you sell your catch?
- A. In the Municipal Fish Wharf in San Pedro.
- Q. To the dealers on the Municipal Fish Wharf in San Pedro, is that correct?
 - A. Yes.
- Q. What did you receive from them in the way of compensation? Did you receive simply the proceeds of the sale of your fish?

- A. They gave us a fish and game ticket, and at the end of the week we would go and collect our check.
 - Q. From the dealers?
 - A. Yes, sir.
- Q. Did you receive any wages or salary of any kind from them?
 - A No.
- Q. Are you under their control or direction in any manner?
 - A. No.
- Q. Last June, who were you fishing with? I am directing your attention specifically to the first part of the month.
 - A. I was fishing with Joseph Stagnaro.
- Q. Subsequent to that time were you fishing with anybody else?
 - A. No.

* * *

- Q. Did you at any time participate in a fishing venture with any member of your family? Did your family own a boat at any time?
 - A. Yes, they owned a boat.
 - Q. What was the name of the boat?
 - A The Flyer.
- Q. Where was that stationed? Was that San Pedro?
 - A. That is in San Pedro.
- Q. In the early part of June, were you doing anything about getting the Flyer ready to fish?

* * *

The Court: That is preliminary, I think. The objection is overruled.

Let us get it a little bit straighter. You began fishing in January?

The Witness: That is right.

The Court: And did you fish with somebody besides your family then or a member of your family?

The Witness: Joseph Stagnaro, I fished with him up until the time of the strike.

The Court: And then?

The Witness: Then after the strike I fished with my brother.

The Court: Then you fished with your brother on his boat?

The Witness: On my father's boat.

The Court: Your father's boat?

The Witness: Yes.

* * *

Q. (By Mr. O'Malley): Did you have a conversation with Mr. Smith of Local 36?

Mr. Anderson: Now, if the Court please, there is no foundation laid there with respect to who Mr. Smith is.

The Witness: Was that after the strike was pulled?

The Court: Just a minute.

I think that is correct. The objection will be sustained to the latter portion of the question.

The question is, did you have a conversation with Mr. Smith on or about June 6th, is that right?

Mr. O'Malley: That is right.

The Witness: That was during the strike?

Mr. O'Malley: That is right.

The Witness: Yes, about a clearance card.

- Q. (By Mr. O'Malley): You discussed the subject of the clearance card, is that right?
 - A. That is right.
 - Q. Where did the conversation take place?
 - A. At their union hall.
 - Q Where is that located?
- A. That is the Fisherman's Wharf in San Pedro.
 - Q. At San Pedro?
 - A. Yes.
- Q. And you went to the union hall at the Fishermen's Wharf in San Pedro and you had a conversation with Mr. Smith. Can you tell us what was said by you and what was said by Mr. Smith?

The Court: Would you know this Mr. Smith? The Witness: Yes, I would. There he is over there in the green.

(The defendant Smith stood).

- Q. (By Mr. O'Malley): That is the gentleman you talked to? A. Yes.
- Q Did you have any discussion with him with reference to a clearance card?
 - A. There was a whole committee there.
 - Q. Who else was there besides Mr. Smith?
- A. I think you were there, I am not quite sure but I think you were.

The Court: Which one? The man at the end of the table?

The Witness: The man at the end of the table.

You mean this man here?

(The defendant Knowlton stood.)

The Witness: Yes.

The Court: Mr. Knowlton?

The Witness: George Knowlton.

The Court: Mr. Knowlton?

The Witness: Yes.

Q. (By Mr. O'Malley): Did you see anybody else in this courtroom who was present at that conversation?

A. The union leader over there. (Indicating.)

The Court: Will you stand up?

(The defendant Zafran stood up.)

The Court: Mr. Zafran?

- Q. (By Mr. O'Malley): Is that the man you talked to?
 - A. Yes, when I came in I spoke to him first.
- Q. What did you say when you got to the union hall? [830]

Q. (By Mr. O'Malley): Just tell me what you said when you got there. Tell the Court and the jury what your conversation was, what you said and what they said.

A. We wanted to find out about the clearance cards.

- Q. What did you ask them?
- A. We asked him if it was true or not that they had let some of the boats go fishing.
 - Q. What was said?
 - A. They said to go in and see the committee.
 - Q. Who made this statement?
 - A. Mr. Zafran.
 - Q. What did he say?

* * *

The Witness: They will tell you if you can go out fishing or not.

- Q. (By Mr. O'Malley): Then what happened?
- A. We went in to see the committee.
- Q. Who went to see the committee?
- A. There were two or three of us there.
- Q. You were included? A. Yes. [831]
- Q. Just tell us what was said by you when you went into the committee room. Did you repeat your request for a clearance card?
- A. Yes, we repeated it. We asked him about going out fishing.

The Court: Asked who this time?

The Witness: The committee.

The Court: The committee?

The Witness: Yes.

- Q. (By Mr. O'Malley): What was said?
- A. I don't know what they said, but they told us to go outside and they would take a vote on it.
 - Q. Then what happened?

- A. We went outside and they told us to come back in and told us at 12:00 noon they would give us our card to go out.
 - Q. Very well. Who told you that?
 - A. One of the representatives of the committee.
- Q. Do you know which one made that statement or did all of them make that statement?
 - A. I couldn't tell you which one.
- Q. But that was the substance of their answer, is that correct? A. Yes.
- Q. Now at the conversation was there some discussion with reference to a clearance card?
 - A. Repeat that, please.

* * *

The Court: Was anything said about a clearance card?

The Witness: Yes, they said we would have to have one to go fishing.

Mr. O'Malley: Very well.

- Q. Was anything said about where you could sell your fish?
 - A. Yes, they said down at Newport.
- Q. Was there anything said about selling your fish in San Pedro? [833]
 - A. They told us just the dealers down there.

The Court: Just the dealers where?

A. Down in Newport. [834]

* * *

Q. (By Mr. O'Malley): Was anything said by the committee, any members of the committee, with reference to where you could sell your fish?

A. Yes.

* * *

Q. To your best recollection, who made the statement?

A. The committee. They told us to sell the fish down at Newport.

Q. (By Mr. O'Malley): Do you remember which member of the committee made that statement?

A. I guess they all talked about it.

Mr. Andersen: I move that that be stricken as not responsive. [835]

Mr. O'Malley: I think it is responsive, your Honor.

The Court: Yes.

Q. (By Mr. O'Malley): That was the substance of your conversation with them?

A. Right.

Q. Was anything said at that time—

Mr. Andersen: May it please the Court, I misunderstood your ruling. The witness said "I guess."

The Court: I denied your motion on the basis that in the vernacular this witness apparently when he says "I guess" means "I remember."

Is that what you mean to say or are you guessing now?

The Witness: It is 10 months ago.

The Court: Is that your best recollection?

The Witness: Yes.

The Court: All right.

- Q. (By Mr. O'Malley): Now at this meeting with the committee on June 6th, was anything said about picketing? A. They told us
 - Q. Who told you?

The Court: Just answer the question first. Was anything said?

The Witness: Yes. [836]

- Q. (By Mr. O'Malley): Now will you tell us who said it, who had a discussion with you about that? Can you tell us who it was?
- A. It was the committee that told us every seven days we would have to come in and renew our card and get it punched so we could go back out.
- Q. When you say renewing the card, you mean the clearance card? A. The clearance card.
 - Q. How did you renew your card?
- A. They would punch it every time we would picket.
- Q. Were there any instructions by the committee as to how your card should be renewed?
- A. Yes, by picketing. They would punch the card every time we picketed.
- Q. Is that what the committee instructed you at the time? A. Yes. [837] * * * 640.32 . 457
- Q. (By Mr. O'Malley): I show you this document, which is designated as Government's Exhibit

7 for identification, and ask you if you have ever seen that document before. A. Yes.

- Q. Where did you see that for the first time?
- A. I seen this for the first time in the union hall.
- Q. What were the circumstances under which you saw it? Tell us how you happened to see it, in other words.

 A. They gave it to me.
 - Q. Who gave it to you?
 - A. The committee.
 - Q. Can you tell us when that was?
 - A. No, I couldn't.
- Q. Is there any date upon the document which would refresh your recollection?
- A. This is the second one I got. I got one before this one.
- Q. You got a like document before that, is that correct? [838] A. Yes.
- Q. And is there any date upon the document which refreshes your recollection as to the date on which you obtained it? A. 6 and 23.
 - Q. Would that be June 23rd?
 - A. That is right.
 - Q. Of what year? Last year? A. 1946.
- Q. 1946? A. Yes.
- Q. And you obtained that at the committee hall, at the union hall, is that correct? A. Yes.
 - Q. What was that document used for?
- A. That was our clearance card. That cleared us picketing. That cleared us to come in and sell our fish.

- Q. Now at the earlier meeting did you also obtain a clearance card? You spoke about your first meeting with the union. You said this was the second card you obtained.
- A. That is the second one. I don't think I got that one from the union hall. I think I got that on the wharf.
 - Q. Who did you obtain it from?
 - A. That I can't remember. [839]
- Q. Do you have any recollection as to who you obtained it from?
- A. I think they said they were going to use a new system so they took the one I had and give me that one.
 - Q. Who did?
 - A. I couldn't tell you.
- Q. Do you have any recollection as to whether the first person who gave you this exhibit was in any way associated with the defendant Local 36?
 - A. He was one of the union men; yes.

* * *

Mr. O'Malley: Government's Exhibit 7 for identification is offered in evidence, your Honor.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 7.)

Mr. O'Malley: I would like to read it to the jury. [840]

- Q. You testified that you did fish during the strike, is that right? A. Yes.
- Q. Where did you sell your fish during the strike?
 - A. Fishermen's Coop, down at Newport.
 - Q. Newport? A. Yes.

Mr. O'Malley: I believe that is all. Your witness.

Mr. Andersen: No questions. [841]

AUGUSTINO CASTAGNOLA, JR.

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Augustino Castagnola, Jr.

The Clerk: How do you spell your first name?

Direct Examination

By Mr. O'Malley:

- Q. And you live in San Pedro?
- A. Yes, sir.
- Q. What business are you in, Mr. Castagnola?
- A. Commercial fishing.
- Q. How long have you been a fisherman?
- A. About five years.
- Q. You have fished for the past five years, have you?
 - A. Except for about two years in the Navy.

- Q. Except for two years during which you were in the Navy you have been constantly in the business of fishing?

 A. Yes, sir.
 - Q. What kind of fish do you fish for?
 - A. Barracuda, sea bass, sardines.

* * *

The Court: Just a moment. When you say what kind of fish, do you mean whether he fishes for the fresh fish market?

Mr. O'Malley: That is right.

- Q. Are those species you just referred to, are they a species of fresh fish?
- · A. Barracuda and sea bass is. Sardines is for the cannery.
- Q. Where did you sell your catch, directing your attention to last June of 1946?

The Court: That is the fresh fish we are only concerned with?

Mr. O'Malley: Yes, fresh fish.

The Witness: We were selling them in Newport. [843]

- Q. (By Mr. O'Malley): Were you engaged in the fishing operation as a boat owner or as a fisherman working by shares?
- A. I was working by shares. I was skipper on the boat but I was working by shares.
 - Q. Who owns that boat? A. My sister.
 - Q. Your sister owned the boat?
 - A. Yes, sir.
 - Q. What was the name of the boat?
 - A. Flyer.

- Q. How large a crew did it have?
- A. Three men; two including myself.
- Q. Who were they?
- A. One was Nello Castagnola and one George Castagnola.
 - Q. Are they brothers of yours?
 - A. Yes, sir.
- Q. When you sold your catch, did you sell it on a share basis?
 - A. What do you mean by that, sir?
- Q. You sold your catch to the dealers in San Pedro, is that what you testified to?
 - A. Yes, sir.
 - Q. Or Newport? A. Newport.
 - Q. I beg your pardon. [844]

The Court: You mean you have always sold it at Newport?

The Witness: No, sir.

- Q. (By Mr. O'Malley): I am directing your attention specifically to last June 1946. At that time you were selling your catch at Newport, is that correct? A. Yes, sir.
- Q. Did you receive any wages or salaries from the dealers, or was your compensation according to the amount of fish you caught?
 - A. According to the amount of fish.
 - Q. Who received the proceeds of it?
 - A. The Fishermen's Coop.
- Q. I think you may have misunderstood my question. Who received the proceeds of the sale of the fish?

 A. I did.

Q. How did you distribute that?

A. The boat gets a share, the net gets a share and then each member of the crew gets a share.

The Court: How many shares in the boat?

The Witness: Five. There is one share in the boat, one share in the net, and there is three shares for the men.

The Court: You each get a share, each of the men gets a share?

The Witness: Yes, sir. [845]

- Q. (By Mr. O'Malley): Have you ever been a member of this organization which calls itself Local 36?

 A. No, sir. [846]
- Q. Directing your attention to the first week in June of 1946, did you go out fishing at that time?
 - A. No, sir.
 - Q. Why didn't you?
- A. I came out of the Navy on May 23rd, I got discharged May 23rd, and we were getting some gear ready around the end of May or the beginning of June.
 - Q. What time were you ready to fish?
 - A. We were ready about June 5th or 6th.
 - Q. Did you go out and fish at that time?
 - A. We went out June 6th, I think.
 - Q. And where did you sell your fish?
 - A. We sold our fish in Newport.
 - Q. Did you do any picketing at that time?

Mr. Andersen: To which we will object as incompetent, irrelevant and immaterial, for the reasons stated.

The Court: Yes, I think it is immaterial. Objection sustained.

Mr. O'Malley: May it please the court, I believe it is competent for the government to show the manner of the restriction which was placed upon the operation of these fishermen. I think we are entitled to show just how that restriction was placed upon these fishermen.

Mr. Kenny: I would be delighted to argue that with counsel, but I think it ought to be out of the presence of the [847] jury.

The Court: Yes, I think so.

Mr. O'Malley: Very well.

The Court: Your question was whether or not he did any picketing. I can't see the materiality of whether a particular person did or didn't picket. I think it is immaterial.

Mr. O'Malley: If the court please, the question concerning picketing was directed specifically to allegation (k) on page 7 of the indictment. The government would like to be heard——

The Court: Just a moment. Let me get it.

I think that is correct. I will reverse my ruling on it.

Mr. Kenny: Now, we would like to be heard, your Honor.

The Court: There is a specific allegation here, and it is pretty hard to get around that.

Mr. Kenny: There was a matter we started to discuss earlier today, and if you recall, we adjourned for lunch, and it has not been completed

(Testimony of Augustino Castagnola, Jr.) yet. I think it goes to the heart—we may have a lot of testimony that may not be material at all.

Mr. O'Malley: It is hard to see how we could prove the conspiracy—

The Court: I will overrule the objection.

Mr. O'Malley: Very well. [848]

The Court: Counsel may argue the matter later on in connection with a motion to strike, which I understand they anticipate making in connection with various matters, anyhow. The objection is overruled.

Q. (By Mr. O'Malley): Mr. Castagnola, during the period of the strike did you do any picketing?

A. Yes, sir. I picketed, I think, twice, once or twice.

Q. (By Mr. O'Malley): Where did you picket? A. San Pedro. [849]

- Q. (By Mr. O'Malley): You testified that you fished for fresh fish out of Newport. Was that fishing within the three-mile limit or outside of the three-mile limit?
 - A. Sometimes inside and sometimes outside.
- Q. Mr. Castagnola, you testified that your boat was owned by your sister, is that correct?
 - A. Yes, sir. [851]
- Q. Could you tell us approximately what the value of your boat was?

Mr. Andersen: To which we object as incompentent, irrelevant and immaterial.

Mr. O'Malley: I think we are entitled to show that these fishermen were in business for themselves, and to show——

The Court: Objection overruled.

- Q. (By Mr. O'Malley): Do you have any knowledge as to approximately what the value was?
 - A. Approximately about \$10,000.
- Q. Does that include the gear and other equipment? A. It includes the gear.
- Q. That is the entire investment in the boat, is that correct? A. Yes, sir.

Mr. O'Malley: Very well. Your witness.

Cross-Examination

By Mr. Kenny:

- Q. I see. Over there in Newport, the dealer to whom you sold your fish was known to you, was he not, as a dealer who had signed the union contract?
 - A. That is what I heard.
- Q. And he paid you a price for your fish that was the minimum OPA price at that time, did he not, when you took it over there to Newport?
- A. I think it was a minimum OPA price, I think it was.
- Q. Just one other question to develop the matter of the earnings. You said, Mr. Castagnola, that there were five shares on the boat Flyer—the boat

(Testimony of Augustino Castagnola, Jr.) gets a share, the net gets a share, and each of three men get one share, is that right.

- A. That's right.
- Q. If you go out fishing for barracuda, and you don't catch any barracuda at all, how was the loss divided, assuming that you received nothing for your catch—do you put your work in?
 - A. That's right.
 - Q. And your brother and the other man?
 - A. Yes.
 - Q. Do you get paid for that? A. No.
- Q. How many trips have you made—you have been in the fishing business now since June 6th last year, how many trips have you made since then?
- A. When we fish barracuda we go out daily and come in [854] daily.
 - Q. When do the barracuda run?
 - A. April and May, June, July.
- Q. So you fished for barracuda in June and July, didn't you? Well, what did you get paid out of your share on those barracuda trips for June and July?

 A. Out of my share?
 - Q. What did you get paid for your share?
 - A. I don't know. I have got nothing with me.

The Court: Do you have an idea?

The Witness: I know approximately, yes; about \$800.

- Q. (By Mr. Kenny): For two months work?
- A. That's right.
- Q. Then what did you do in the fishing business in August, what fish were running?

- A. I tied my boat up and start fishing for mackerel, sardines, out of a purse seine.
 - Q. You weren't fishing on your own boat?
 - A. That's right. I went fishing on a purse seine.

The Court: When you went fishing for sardines on a purse seine you went on another boat?

The Witness: Yes.

The Court: As a fisherman for a share of that lay?

The Witness: Yes.

- Q. (By Mr. Kenny): You were fishing for a share at this [855] time? A. Yes.
 - Q. What was that boat? A. St. Christina.
 - Q. Were you a member—
 - A. A. F. of L.
- Q. Thank you. How many months did you fish for mackerel and sardines?

 A. Six months.
- Q. What did you make while you were fishing A. How much I made? there ?
- Q. Yes. What did you make a month, or what did you earn?
- A. Some months, a couple of months I made \$600, and then I made \$200, share basis. I made about, all together, about \$2,000.
 - Q. About \$2,000? A. That's right.
- That is six months, that brings us up to January. All right. That is 800 and 2,000. Now, what have you been fishing for during the month of February?
- A. There is some slack periods in between there. I haven't been doing nothing all this month.

Q. I see.

The Court: Have you resumed fishing on—what is the [856] name of this boat?

The Witness: The Flyer.

The Court: The Flyer?

The Witness: I am going to.

The Court: You have not since you came off of the sardine catch?

The Witness: No, sir.

Q. (By Mr. Kenny): Then it would be your testimony that you have earned \$2,800 during this time you have been in the fishing industry, since you got back from the Navy, is that right?

A. That's right.

Mr. Kenny: Thank you very much.

The Court: Redirect?

Redirect Examination

By Mr. O'Malley:

- Q. You testified you earned approximately \$2,800 since you have gotten out of service, is that correct? A. Yes, sir.
- Q. Did you devote all your time to the fishing industry?

 A. Yes, sir.
- Q. Were you constantly fishing, or were there some interruptions?
- A. Between last June and the first of March it has been constant. [857]
 - Q. Very well.

The Court: When you fish sardines, do you fish all the time or do you fish by the light of the moon?

The Witness: Light of the moon, five days off.

The Court: Five days off. Then do you fish mackerel?

The Witness: No, sir; nothing.

The Court: You are tied up?

The Witness: Tied up.

* * *

- Q. (By Mr. O'Malley): After the period of the strike did you continue to sell fish at Newport?
 - A. No sir; San Pedro.
- Q. And after the strike you sold fish at San Pedro, is that correct? A. Yes, sir.

Mr. O'Malley: That is all.

JOSEPH STAGNARO

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Joseph Stagnaro.

The Clerk: And your address?

The Witness: 371 Twelfth Street, San Pedro.

Direct Examination

By Mr. Rubin:

- Q. Mr. Stagnaro, what is your business or occupation? A. Fisherman.
- Q. How long have you been so engaged as a fisherman?

 A. Practically all my life.

(Testimony of Joseph Stagnaro.)

- Q. Do you own your own boat?
- A. Yes, sir.
- Q. What is the name of your boat?
- A. Sport II.
- Q. Out of what port do you fish from, principally?

 A. San Pedro. [859]
- Q. Did you fish from that port during the year 1946? A. Yes, sir.
 - Q. Are you a member of Local 36?
 - A. No, sir.
- Q. During the month of June, 1946, during the first week in that month, did you fish out of the port of San Pedro?

 A. First week?
 - Q. Yes. A. Month of June?
 - Q. Yes. A. No.
- Q. When was the last time prior to the first week of June that you did fish out of the port of San Pedro?
 - A. Well, it was in May, latter part of May.
 - Q. The latter part of May? A. Yes.
- Q. (By Mr. Rubin): To whom do you sell the catch? [860] A. The fresh fish markets.
 - Q. Located in what port? A. San Pedro.
- Q. Is that the market to whom you sold your catch when you fished during the month of May, 1946? A. Yes, sir.
- Q. Do you know what species of fish were running during May and June of 1946?

* * *

(Testimony of Joseph Stagnaro.)

- A. Well, every season the same fish runs those two months.
 - Q. What fish is that?
 - A. Barracuda and sea bass.
- Q. During what months do these species of fish run?
- A. They run May, June, July, August, September.
- Q. Were you fishing for those species of fish during those months?
 - A. I was fishing barracuda.
- Q. When did you stop fishing in May, Mr. Stagnaro? [861]
 - A. I fished up to the beginning of the strike.
- Q. And when you say "the strike," what do you mean?

 A. When the boats tied up.
- Q. At what port were the boats tied up, if you know?

 A. Tied up in San Pedro.
- Q. I see. Now, after the boats tied up at San Pedro, when was the first time that you went fishing after the commencement of that tie-up?
- A. I don't know. It must have been seven or eight days after.
- Q. (By Mr. Rubin): Prior to the time you went fishing, did you ever go to the office of Local 36? A. Yes.
 - Q. And did you see anybody there? A. Yes.
- Q. And did you have any conversation with any person there? A. Yes. [862]